

**DRAFT DATE: January 4, 2019**

**Contract No. \_\_\_\_\_**

# **OPERATIONS AND MAINTENANCE AGREEMENT**

**Between**

**NEW ORLEANS REGIONAL TRANSIT AUTHORITY**

**and**

**[CONTRACTOR]**

**June \_\_, 2019**

## TABLE OF CONTENTS

SEC. 1	DEFINITIONS .....	4
SEC. 2	SCOPE OF WORK, REPRESENTATIONS AND WARRANTIES, AND ALLOCATION OF RESPONSIBILITIES .....	11
SEC. 3	CONTRACT AWARD AND NOTICE TO PROCEED .....	14
SEC. 4	CONTRACT TERM .....	15
SEC. 5	COMPENSATION FOR SERVICES .....	16
SEC. 6	TRANSITION AND START-UP .....	18
SEC. 7	SPECIAL SERVICES 1f C 11 .....	21
SEC. 8	INVOICES .....	22
SEC. 9	STAFFING AND PERSONNEL REQUIREMENTS .....	23
SEC. 10	OPERATIONS STANDARDS AND PERFORMANCE REQUIREMENTS .....	30
SEC. 11	VEHICLE MAINTENANCE, APPEARANCE, AND RELATED REQUIREMENTS .....	33
SEC. 12	VEHICLE AND EQUIPMENT WARRANTY REPAIRS .....	40
SEC. 13	OPERATIONS AND MAINTENANCE FACILITY .....	41
SEC. 14	CLEVER DEVICE SYSTEM REQUIREMENTS .....	44
SEC. 15	MATERIALS AND EQUIPMENT REQUIREMENTS .....	46
SEC. 16	INVENTORY REQUIREMENTS .....	49
SEC. 17	COMPUTER AND TECHNOLOGY REQUIREMENTS .....	50
SEC. 18	FARE COLLECTION .....	51
SEC. 19	SAFETY AND SECURITY .....	53
SEC. 20	MARKETING AND ADVERTISING .....	56
SEC. 21	SERVICE CHANGES .....	57
SEC. 22	KEY PERFORMANCE MEASURE ACHIEVEMENT .....	59
SEC. 23	PROJECT OPERATION RECORDS AND REPORTS .....	68
SEC. 24	PASSENGER COMPLAINTS .....	74
SEC. 25	INSPECTION OF WORK .....	74
SEC. 26	OPERATION DURING A DECLARED EMERGENCY .....	75
SEC. 27	INSURANCE .....	75
SEC. 28	BONDING REQUIREMENTS .....	78
SEC. 29	INDEMNIFICATION AND HOLD HARMLESS .....	79
SEC. 30	DISPUTES .....	79
SEC. 31	ASSIGNMENT .....	80
SEC. 32	SUBCONTRACTING .....	81
SEC. 33	INDEPENDENT CONTRACTOR .....	81
SEC. 34	LICENSES, PERMITS, AND TAXES .....	82
SEC. 35	CONFLICT OF INTEREST .....	82
SEC. 36	COMPLIANCE WITH LAWS AND PERMITS .....	83
SEC. 37	CANCELLATION OF CONTRACT .....	83
SEC. 38	TERMINATION FOR CONVENIENCE .....	83
SEC. 39	TERMINATION BY MUTUAL AGREEMENT .....	84
SEC. 40	REMEDIAL MEASURES .....	84
SEC. 41	TERMINATION FOR DEFAULT .....	88

<b>SEC. 42</b>	<b>FORCE MAJEURE .....</b>	<b>89</b>
<b>SEC. 43</b>	<b>DISRUPTIONS IN SERVICE .....</b>	<b>89</b>
<b>SEC. 44</b>	<b>AUDIT AND INSPECTION OF RECORDS .....</b>	<b>90</b>
<b>SEC. 45</b>	<b>LACK OF FUNDS .....</b>	<b>90</b>
<b>SEC. 46</b>	<b>NO FEDERAL GOVERNMENT OBLIGATIONS .....</b>	<b>91</b>
<b>SEC. 47</b>	<b>WAIVER OF TERMS AND CONDITIONS .....</b>	<b>91</b>
<b>SEC. 48</b>	<b>INTERPRETATION, JURISDICTION, AND VENUE .....</b>	<b>91</b>
<b>SEC. 49</b>	<b>OFFICIAL RECEIPT DURING CONTRACT PERFORMANCE .....</b>	<b>91</b>
<b>SEC. 50</b>	<b>SEVERABILITY .....</b>	<b>91</b>

## **ATTACHMENTS**

Attachment A-1	System Maps and Scheduled Routes
Attachment B-1	Revenue Vehicle Listing
Attachment B-2	Vehicle Warranty Information and Fleet Facts
Attachment B-3	Facility Information
Attachment B-4	Equipment Inventory
Attachment B-5	Clever Device System Description
Attachment C-1	Regional Transit Authority Vehicle Condition Policy
Attachment C-2	Regional Transit Authority Maintenance Staffing Requirements
Attachment D	Regional Transit Authority Uniform Policy
Attachment E	Minimum Wage Requirements
Attachment F-1	Compensation (Definitions and Acronyms)
Attachment F-2	Compensation (Compensation For Services)
Attachment G	Federal Requirements
Attachment H	Regional Transit Authority System Safety Program Plan/Agency Safety Plan
Attachment I	Regional Transit Authority Complaint Processing Procedure and Customer Service Guidelines
Attachment J	City Assisted Evacuation Plan

## **OPERATIONS AND MAINTENANCE AGREEMENT**

This Transit Services Operations and Maintenance Agreement (“Agreement”) is made and entered into on June \_\_\_, 2019, by and between the New Orleans Regional Transit Authority (“Regional Transit Authority”), a political subdivision of the State of Louisiana, whose address is 2817 Canal Street, New Orleans, Louisiana, and [Name of Contractor] (“Contractor”), a [State] corporation authorized to do business in the State of Louisiana.

### **RECITALS**

WHEREAS, the Regional Transit Authority conducted a competitive procurement process to select a Contractor to operate and maintain transit service by means of fixed route transit bus services, streetcar transit, ferry service, complementary paratransit service provided in accordance with the requirements of the Americans with Disabilities Act of 1990 (ADA), and special services operating out of Facilities owned and provided by the Regional Transit Authority.

WHEREAS, the Contractor was selected as the highest ranked proposer under the evaluation process and criteria established in Request for Proposals No. 2019-005.

WHEREAS, the Regional Transit Authority and the Contractor have finalized mutually acceptable terms and conditions setting forth the rights and obligations of the parties under this Agreement.

WHEREAS, the Regional Transit Authority’s Board of Commissioners has approved contract award to the Contractor.

NOW THEREFORE, in consideration of the above and the mutual promises hereinafter given the Regional Transit Authority and the Contractor have agreed as follows:

### **SEC. 1        DEFINITIONS**

(1)    Agreement. -- The term “Agreement” means this Agreement between the Regional Transit Authority and the Contractor for the operation and maintenance of the transit services described in this Agreement and the Attachments hereto.

(2)    Annual Service Payment.—The term “Annual Service Payment” means the amount paid by the Regional Transit Authority during the course of a Contract Year, as defined in Attachment F-1 and calculated in accordance with Attachment F-2, as compensation for the Contractor’s fixed costs.

(3) Approval. – The term “Approval” means a written determination by the Regional Transit Authority that a particular plan, program, invoice, action, or submittal of the Contractor appears to meet the requirements of this Agreement or the other Contract Documents.

“Approval” shall not operate to shift any risk to the Regional Transit Authority or relieve the Contractor of any obligations under this Agreement.

(4) BAFO. -- The term “BAFO” means Best and Final Offer.

(5) Clever Device System. – The term “Clever Device System” means the communications system supplied by the Regional Transit Authority, through Clever Devices, LTD., for use in tracking schedule adherence, improving dispatching and on-street service delivery, and providing more accurate and timely data and information on system performance and providing the required information to support the Regional Transit Authority’s customer information systems, as more specifically described in Attachment B-5.

(6) Commencement Date. -- The term “Commencement Date” means the date the Contractor assumes responsibility for the operation of Revenue Service under this Agreement, currently scheduled for September 1, 2019.

(7) Contract Documents. -- The term “Contract Documents” means the following documents, set forth in their order of precedence: (A) this Agreement (including the Attachments hereto); (B) the BAFO request; (C) the Contractor’s BAFO; (D) the RFP; and (E) the Contractor’s proposal in response to the RFP.

(8) Contract Month – The term “Contract Month” means a calendar month during a Contract Year.

(9) Contract Term. -- The term “Contract Term” means the three (3)-year base contract term beginning as of the Commencement Date and the duration of either or both of the two three (3) year options terms (if exercised by the Regional Transit Authority).

(10) Contractor. -- The term “Contractor” means [Name of Contractor], the corporation entering into this Agreement with the Regional Transit Authority to provide the Scope of Work described herein.

(11) Contractor General Manager. -- The term “Contractor General Manager” means the Key Personnel member designated by the Contractor to oversee the proper operation and overall performance under this Agreement in its entirety.

(12) Days. -- The term “Days” means business days recognized by the Regional Transit Authority, except that if the end of a period of time specified in this Agreement falls on any of the following days, the end of such period shall be deemed to fall on the next business day: (A) New Year’s Day, Martin Luther King, Jr. Day, Mardi Gras, Good Friday, Memorial Day,

Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve and Christmas Day; and (B) any holiday recognized by the Regional Transit Authority on a weekday when that holiday falls on a weekend.

(13) Deadhead. -- The term "Deadhead" means movement of a Revenue Vehicle without fare-paying passengers between: (A) a Facility and the beginning point of a scheduled Trip; (B) the end point of an scheduled Trip and a Facility; (C) the ending point of a scheduled Trip and a layover location; (D) interlined route movements; and (E) movement from a layover location and the start of a Trip. The term "Deadhead" includes "Recovery Time" for a mode of transportation only to the extent that "Recovery Time" exceeds fifteen (15) percent of Revenue Service Hours for that mode of transportation.

(14) Deadhead Time. -- The term "Deadhead Time" means the time measured in hours that a Revenue Vehicle travels in Deadhead operations.

(15) Deductions. -- The term "Deductions" means amounts assessed to the Contractor in the nature of liquidated damages for the Contractor's failure to achieve Key Performance Measures set forth in Section 22 of this Agreement.

(16) Equipment. -- The term "Equipment" means the maintenance equipment, fareboxes and other fare collection equipment, computers, cameras, communications equipment, furniture at the Facilities, and other equipment and systems used by the Contractor and owned by the Regional Transit Authority to provide services under this Agreement. The current inventory of Equipment is identified in Attachment B-4.

(17) Event of Default. -- The term "Event of Default" means an action or omission of the Contractor that may give rise to a Termination for Default under Section 41 hereof.

(18) Executive Director. -- The term "Executive Director" means the Regional Transit Authority Executive Director or his or her designee.

(19) Facilities. -- The term "Facilities" means: (A) the Regional Transit Authority Administrative Building and Repair/Maintenance Facility located at 2817 Canal Street; (B) the Algiers/Canal Ferry Terminals; (C) the historic structure (currently under renovation) and the storage building for the infrastructure team located at 419 Napoleon Avenue; (D) the Carrollton Streetcar Barn and the Streetcar Construction and Maintenance Facility located at 8225 Willow Street; (E) the Repair/Maintenance Facility and Eastern New Orleans Administrative Building located at 3901 Desire Parkway; and (F) the Chalmette/Algiers Ferry Terminals located at 7320 Patterson Drive. The term "Facilities" also includes all bus stops, bus shelters and amenities, and all streetcar infrastructure, including the following streetcar substations: (1) Calliope Substation; (2) Valence Substation; (3) Dublin Substation; (4) White Street; (5) SIS Station; and

Bienville Street. The Facilities are owned by the Regional Transit Authority (or, in the case of the ferry terminals, provided to the Regional Transit Authority) and shall be used maintained by the Contractor to provide services and operate and maintain Revenue Vehicles and other Vehicles under this Agreement.

(20) Federal Transit Administration (FTA). -- The term “Federal Transit Administration” or “FTA” means the Federal Transit Administration of the United States Department of Transportation or its successor entity.

(21) Fit-For-Use. – The term “Fit-For-Use” when applied to a Revenue Vehicle means fully operable and available to be used in Revenue Service without the need for maintenance, repair or cleaning.

(22) Incentives. -- The term “Incentives” means amounts awarded to the Contractor for exceeding Key Performance Measures set forth in Section 22 of this Agreement, provided that the dollar amount of Incentives awarded in any Contract Month shall not exceed the dollar amount of the Deductions assessed for that Contract Month.

(23) Key Performance Measure.-- The term “Key Performance Measure” means a performance standard set forth in Section 22 of this Agreement that may subject the Contractor to Deductions if the Contractor fails to achieve the standard and may result in the award of Incentives if the Contractor exceeds the standard.

(24) Key Personnel. -- The term “Key Personnel” means the Contractor’s General Manager, Performance and Reporting Manager, Operations and Safety Manager, Maintenance Manager and Customer Service Manager.

(25) Late Trip. -- (A) For purposes of fixed route bus services and streetcar services, the term “Late Trip” means a Trip for which the Revenue Vehicle arrives at a Time-Point later than five (5) minutes after the published scheduled arrival time or departs later than ten (10) minutes after the published scheduled departure time; (B) For purposes of ferry services, the term “Late Trip” means a Trip for which the Revenue Vehicle arrives at a Time-Point later than ten (10) minutes after the published scheduled arrival time or departs later than fifteen (15) minutes after the published scheduled departure time; and (C) For purposes of ADA Paratransit, the term “Late Trip” means a Trip for which the Revenue Vehicles arrives at the pick-up location more than twenty-five (25) minutes after the scheduled pick-up time.

(26) Missed Trip. – (A) For fixed route purposes, the term “Missed Trip” means: (i) a Trip in which more than 75 percent of the scheduled Revenue Service Miles for the Trip are not provided; (ii) a Trip for which the Revenue Vehicle departs from a Time-Point after the published departure time of the next scheduled Trip (applicable only to fixed route bus and streetcar

service); (iii) a Trip that departs more than thirty (30) minutes after the scheduled departure time (applicable only to ferry service); or (iv) a Trip during which the Revenue Vehicle is determined to be not Fit-For-Use for any portion of the Trip. and (B) For ADA Paratransit purposes, the term “Missed Trip” means: (i) a Trip for which the Revenue Vehicle arrives at the pick-up location more than thirty (30) minutes after the scheduled pick-up time; (ii) a Trip where the Revenue Vehicle arrives at a pick-up location more than twenty (20) minutes prior to the scheduled pick-up time if the passenger is not present and the operator fails to wait until, at least, fifteen (15) minutes prior to the scheduled pick-up time before departing; or (iii) a Trip for which the Revenue Vehicle fails to arrive at the pickup location.

(27) MMS. -- The term “MMS” means the Vehicle and Maintenance Management Systems provided by Regional Transit Authority and used by the Contractor to record and monitor maintenance performed on Revenue and Non-Revenue Vehicles, Vehicle warranty repair information, parts inventory and utilization, fueling, and other activities and information as specified in this Agreement. The MMS software system will be provided by Regional Transit Authority at the beginning of the Contract Term. The Regional Transit Authority currently uses the MMS software system of Ron Turley and Associates. Regional Transit Authority reserves the right to provide and require the use of additional or alternative software during the Contract Term.

(28) Monthly Service Payment.-- The term “Monthly Service Payment” means the amount to be paid by Regional Transit Authority to the Contractor each month defined and calculated in accordance with Attachments F-1 and F-2 , as compensation for the Contractor’s fixed and variable costs.

(29) On-Time. – (A) For the purposes of fixed route bus services and streetcar services, the term “On-Time” means that a Revenue Vehicle departs from a Time-Point no more than one (1) minute before the published scheduled arrival time and no later than five (5) minutes after the published scheduled departure time; (B) For the purposes of ferry services, the term “On-Time” means that a Revenue Vehicle departs from a Time-Point no more than three (3) minutes before the published scheduled arrival time and no later than ten (10) minutes after the published scheduled departure time; and (C) For the purposes of ADA Paratransit services, the term “On-Time” means that a Revenue Vehicle departs from a scheduled pick-up location no more than fifteen (15) minutes before the scheduled pick-up time and no later than fifteen (15) minutes after the scheduled pick-up time. In addition, On-Time means that a Revenue Vehicle makes all scheduled stops along its route.



(30) Party or Parties. -- The term “Party” or “Parties” means the Regional Transit Authority and the Contractor, individually (each a Party) and collectively (the Parties).

(31) Preventable Accident. -- The term “Preventable Accident” means an accident in which Contractor’s staff failed to take appropriate reasonable actions, including the failure to react to the errors of others, anticipating hazards or applying defensive driving procedures, to avoid or prevent the accident.

(32) Property Condition Assessment. -- The term “Property Condition Assessment” means a visual evaluation of the overall condition of the Facilities, designed to evaluate the Facilities for observed conditions beyond normal “wear and tear”, and includes an inventory of Equipment (including furniture) at the Facilities.

(33) Pull-In. -- The term “Pull-in” means movement without fare paying passengers from the terminus of a Trip to return to the applicable Facility.

(34) Pull-Out. -- The term “Pull-out” means movement without fare paying passengers from the applicable Facility to the origin of a Trip.

(35) Non-Revenue Vehicle. -- The term “Non-Revenue Vehicle” means a Vehicle that is used to support transit services under this Agreement (such as a supervisory or relief Vehicle), but is not used in Revenue Service. The term includes both the Non-Revenue Vehicles for supervision provided by the Regional Transit Authority and the Non-Revenue Vehicles for relief and other services provided by the Contractor.

(36) RFP. -- The term “RFP” means Request for Proposals No. 2019-005.

(37) Recovery Time. -- The term “Recovery Time” means the time between the end of one Trip and the scheduled start time of the next Trip intended to mitigate schedule adherence issues that could result in service delays. For purposes of compensation, total Recovery Time may not be more than fifteen (15) percent of the total Revenue Service Hours

(38) Regional Transit Authority. -- The term “Regional Transit Authority” means the New Orleans Regional Transit Authority, a political subdivision of the State of Louisiana and a local transportation provider established by the Louisiana State Legislature in 1983, to provide public transit services, including services dating back to 1835, with its principal place of business in New Orleans, Louisiana. The Regional Transit Authority is governed by a eight member Board of Commissioners representing Orleans Parrish, and Jefferson Parrish, and the City of Kenner.

(39) Revenue Service. -- The term “Revenue Service” means the operation of a Revenue Vehicle in transit services available to carry fare paying passengers.

(40) Revenue Service Hour. -- The term "Revenue Service Hour" means the time in hours that a Revenue Vehicle is in Revenue Service. The term includes the Regional Transit Authority allowable levels of Recovery Time and includes any variation in Revenue Service Hours, verified and Approved by the Regional Transit Authority, that a Revenue Vehicle is in Revenue Service for reasons beyond the control of the Contractor (i.e., detours, significant accidents), but does not include Deadhead time, Pull-In Time, or Pull-Out Time.

(41) Revenue Service Hour Rate. -- The term "Revenue Service Hour Rate" means the amount per hour in Revenue Service, including permissible percentages of Recovery Time, applied for each applicable mode of transportation and used, in part, to determine the Monthly Service Payment, based on actual hours in Revenue Service in the month, to be paid by the Regional Transit Authority to the Contractor in compensation for that portion of the Contractor's variable costs of operating and maintaining services under this Agreement (other than its fixed costs). The Rates per Revenue Service Hour by mode of transportation are set forth in Attachment F-2.

(42) Revenue Service Miles. -- The term "Revenue Service Miles" means the distance measured in miles that a Revenue Vehicle operates in Revenue Service, excluding miles in Deadhead movement, Pull In time and Pull-Out time.

(43) Revenue Vehicle. -- The term "Revenue Vehicle" means any Vehicle that is owned or leased by the Regional Transit Authority and any ferry owned by Louisiana Department of Transportation and Development and used by the Contractor to provide services under this Agreement.

(44) Service Change. -- The term "Service Change" means a change to the scope of services provided by the Contractor under this Agreement, as implemented under Section 21 hereof.

(45) Special Services. -- The term "Special Services" means transportation services provided by the Contractor that are in addition to regular transportation services on the routes identified in Attachment A-1, such as Bus Charter and Streetcar Charter transportation services for special events or activities and that are compensated at the Special Services Rates set forth in Attachment F-1 and Attachment F-2 of the Agreement.

(46) Time-Point. -- The term "Time-Point" means a stop along a fixed route that the Regional Transit Authority has designated as a point of measurement for purposes of On-Time performance.

(47) Trip. -- The term "Trip" means a one-way movement of a Revenue Vehicle in service from one terminus to another terminus of a single route.

(48) Vehicle. – The term “Vehicle” includes the Revenue Vehicles and Non-Revenue Vehicles used by the Contractor in providing services under this Agreement.

(49) Work. -- The term “Work” means all the services and responsibilities to be performed by the Contractor under this Agreement, as specified, stated, or implied in this Agreement. The term “Scope of Services” may be used interchangeably with “Work”.

## **SEC. 2       SCOPE OF WORK, REPRESENTATIONS AND WARRANTIES, AND ALLOCATION OF RESPONSIBILITIES**

(a) Summary of Scope. -- The Contractor shall operate and maintain local and express fixed route transit services (including fixed route bus, streetcar and ferry service) and ADA paratransit services for the Regional Transit Authority on the routes and in geographic service areas during the hours of Revenue Service specified in Attachment A-1 (as may be modified by the Regional Transit Authority), in accordance with this Agreement and the other Contract Documents. The Revenue Vehicles allocated to these services are listed in Attachment B-1.

(b) Contractor Performance Requirements. -- The Contractor shall be required, at all times during the term of this Agreement, to perform all services diligently, carefully, and in a professional manner; to have and maintain all required authority, licenses, professional ability, skills, personnel, and capacity to perform the Contractor’s obligations under this Agreement; to furnish all labor, supervision, machinery, material, and supplies necessary therefore (other than Equipment supplied by the Regional Transit Authority), as required under this Agreement; and to comply with all terms and conditions of this Agreement and the other Contract Documents. The Contractor shall be responsible for the operation and maintenance of all Revenue and Non-Revenue Vehicles, plus spares, and for all other labor, Equipment, insurance, supplies, storage, and facilities required to operate services under this Agreement, other than marketing. The Contractor shall conduct all Work in the Contractor’s own name and as an independent contractor and not in the name of, or as an agent for, the Regional Transit Authority.

(c) Contractor Representations and Warranties. -- The Contractor represents and warrants as follows:

(1) The Contractor has, and shall maintain throughout the Contract Term, all licenses and permits necessary to perform the Work in accordance with this Agreement.

(2) The Contractor will provide personnel for the performance of the Work who possess all professional skills and capability necessary for the performance of the Work.

(3) The Contractor will perform the services under this Agreement in accordance with all requirements set forth herein.

(4) The Contractor has reviewed the Scope of Services and warrants that such services can be performed for the compensation provided to the Contractor under this Agreement, without any increase in such compensation during the Contract Term, and agrees not to seek any such increase except as may be expressly authorized by this Agreement.

(5) The Contractor has familiarized itself with the requirements of all applicable Federal, State, and local laws and regulations and the conditions of any required governmental approvals, and will comply with all such requirements and conditions throughout the Contract Term without any increase in compensation.

(6) As of June \_\_, 2019, there are no changes in ownership or control of the Contractor and none are pending or in process. In the event that a change in ownership or control arises subsequent to June \_\_, 2019, the Contractor shall provide the Regional Transportation Authority advance notice of no less than 90 days prior to the effective date of such a change.

(7) As of June \_\_\_\_, 2019, there are no existing or threatened legal proceedings against the Contractor that would have an adverse effect on its ability to perform its obligations under this Agreement. In the event a threatened legal proceeding against the Contractor that may have an adverse effect on its ability to perform its obligations under this Agreement arises subsequent to June \_\_, 2019, the Contractor shall provide the Regional Transportation Authority notice of no less than the (10) Days after the Contractor knows, or should have known, of the threatened legal proceeding.

(d) Contractor Duties.

(1) The Contractor shall coordinate, manage, and control all activities necessary to perform the Work and carry out its responsibilities under this Agreement, which include, but are not limited to, the following: maintaining all Revenue Vehicles and Non-Revenue Vehicles; maintaining the Facilities; maintaining the Equipment; providing operators, mechanics, and all other project personnel; training personnel as necessary; developing administrative procedures and financial records; providing all reports required by this

Agreement; providing security for the Revenue and Non-Revenue Vehicles and the Facilities; providing its own run cuts for services provided under this Agreement; entering those run cuts into Regional Transit Authority's scheduling and/or CAD/AVL software; maintaining all bus stops, shelters and streetcar infrastructure, marketing and advertising (at the director of the Regional Transit Authority), scheduling of ADA Paratransit Services, and developing methods to improve effectiveness and maximize service efficiency.

(2) The Contractor shall be responsible for all costs of performing the Work and providing operations and maintenance services in accordance with this Agreement

(3) The Contractor shall retain employees of the Regional Transit Authority's incumbent contractor in accordance with Section 9(n) of this Agreement.

(4) In operating services under this Agreement, the Contractor shall emphasize maintaining courtesy to passengers, adequate training (including training consistent with the Regional Transit Authority's Customer Service Guidelines set forth in Attachment J.), policies designed to minimize employee turnover and maximize on-time performance, providing well-maintained and mechanically safe Vehicles, and providing back-up Vehicles in an expeditious manner in the event of breakdowns and other service-related items that affect the reliability of service and otherwise carrying out all contractual obligations in a safe and reliable manner.

(5) In providing services under this Agreement, the Contractor shall comply with the Regional Transit Authority Vehicle Condition Policy set forth in Attachment C-1; the Regional Transit Authority Maintenance Staffing Requirements set forth in Attachment C-2; the Regional Transit Authority Uniform Policy set forth in Attachment D; the Minimum Wage Requirements set forth in Attachment E; the Regional Transit Authority System Safety Program Plan/Agency Safety Plan set forth in Attachment H, and with all of the Contractor's plans and programs as approved by the Regional Transit Authority.

(6) In providing services under this Agreement, the Contractor will assist Regional Transit Authority in meeting its Disadvantaged Business Enterprise (DBE) goal, which is currently 31.4 percent.

(7) Contractor Assurance. – The Contractor, and any of its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 Code of Federal Regulations Part 26 in the administration of FTA-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the

termination of this Agreement or such other remedy, as the Regional Transit Authority deems appropriate.

(8) **Prompt Payment.** – The Contractor agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract obligations no later than five (5) days from the receipt of each payment the Contractor receives from the Regional Transit Authority. The Contractor further agrees to return retainage payment to each subcontractor within five(5) days after the subcontractor's work is satisfactorily completed and accepted by the Regional Transit Authority, and all lien delays under applicable laws have expired. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Regional Transit Authority. This clause applies to both DBE and non-DBE subcontractors.

(e) **Regional Transit Authority Duties.** – The Regional Transit Authority shall be responsible for carrying out its obligations under this Agreement, which include: providing Revenue Vehicles; providing Non-Revenue Vehicles for supervision in accordance with this Agreement; providing Equipment and inventory as specified in this Agreement; providing the Clever Device technology; providing fare media including, but not limited to, transfer forms and bus passes; providing planning and directing marketing services; paying fuel costs and utility costs for Revenue Vehicles and Facilities used in providing services under this Agreement subject to the compensation provisions in Section 5 and Attachments F-1 and F-2 of this Agreement; capital replacements; planning transit and ADA Paratransit Services, scheduling of transit services (not including ADA Paratransit Services); providing and managing customer call center operations. Consistent with the responsibility to schedule transit services, the Regional Transit Authority may require that the Contractor to implement a significantly revised transit deployment plan no more than three (3) times per year of Contract services, provided that the Regional Transit Authority provide the Contractor ninety (90) calendar days' notice prior to the implementation of any significantly revised deployment plan.

### **SEC. 3            CONTRACT AWARD AND NOTICE TO PROCEED**

(a) **Request following Award.** -- Within five (5) Days after receiving a specific written request from the Regional Transit Authority, the Contractor shall submit the following to the Regional Transit Authority: (1) the insurance certificates for the policies required under Section 27 of this Agreement; (2) the Performance Bond required under Section 28 of this Agreement; (3) the list of the Contractor's Key Personnel (as identified in the Contractor's

response to the RFP and/or its BAFO (if applicable)); (4) the Contractor's complete organizational chart; and (5) an executed copy of this Agreement.

(b) Notice To Proceed. -- Within three (3) Days after receipt from the Contractor of the documentation required under subsection (a), the Regional Transit Authority, if it determines that the submissions are satisfactory, shall execute the Agreement and issue a Notice to Proceed (NTP) to the Contractor. The Contractor is not authorized to perform work under this Agreement prior to receiving the NTP. Upon receipt of the NTP, the Contractor shall commence Work in accordance with this Agreement and the other Contract Documents.

(c) Required Submittals. -- Within three (3) calendar days after issuance of the NTP, the Contractor shall submit an updated Transition and Start-up Plan to the Regional Transit Authority, for its review and Approval. Within sixty (60) calendar days after issuance of the NTP, the Contractor shall submit to the Regional Transit Authority, for its review and Approval pursuant to Section 6 of this Agreement, updates of the following plans and programs: (1) the Training Program; (2) the Staffing Plan; (3) the Vehicle Maintenance Program, including the Preventative Maintenance Program; (4) the Facility Maintenance Plan; (5) the Safety, Security, and Emergency Preparedness Plan (including the Guidelines for Transit Threat Management, the Continuity of Operations Plan, and the Emergency Response and Operations Plan in compliance with the Hurricane Preparedness Plan); and (6) the fare collection system security policies, procedures, and practices. All such plans and programs shall be consistent with the plans and programs on that topic submitted with the Contractor's proposal in response to the RFP (or BAFO, as appropriate) , and shall contain at least the same level of effort (e.g., the hours of specific training, the elements of the Preventative Maintenance Program, etc.) as set forth in the Contractor's proposal (or BAFO, as appropriate). The Regional Transit Authority shall, within twenty (20) calendar days after receipt, review each such plan and program and either grant Approval of such plan and program as submitted or provide the Contractor with such modifications as the Regional Transit Authority determines necessary. Upon Approval, such plans and programs shall become attachments to the Agreement.

#### **SEC. 4            CONTRACT TERM**

(a) Term. -- The Agreement will become effective upon execution by the Regional Transit Authority. However, the term of this Agreement (the Contract Term) shall be for a base term of three (3) years, with two (2) three year options (if the Regional Transit Authority elects to exercise those options). The Contract Term shall start on the Commencement Date, September 1, 2019. The first year of the base term shall run from

September 1, 2019 through August 31, 2020, and each subsequent year of the Contract Term shall run from September 1 through August 31 of the following year.

(b) Options.

(1) At least ninety (90) calendar days prior to the end of the last year of the three (3) year base term, the Regional Transit Authority shall notify the Contractor in writing whether it intends to exercise the first option. At least ninety (90) calendar days prior to the end of the first option (if exercised), the Regional Transit Authority shall notify the Contractor in writing whether it intends to exercise the remaining option. The decision as to whether to exercise each option shall be at the Regional Transit Authority's sole discretion. The Regional Transit Authority also reserves the unilateral right to extend the Agreement on a month-to-month basis at the end of the base term or following any exercised option provided such right shall not permit the Regional Transit Authority to extend the Agreement unilaterally on a month-to-month basis for more than six (6) months. In the event that the Regional Transit Authority elects to extend the term of the Agreement unilaterally on a month-to-month basis under this provision, compensation for each month of the extension shall be determined on the same basis as compensation was determined pursuant to Attachment F-1 and Attachment F-2 in the preceding final full year of the Contract Term.

(2) The decision to exercise an option under this Agreement is the unilateral right of the Regional Transit Authority to obtain transit services from the Contractor for the option years involved, at the rates submitted in the Contractor's Proposal or BAFO (if applicable) as determined in accordance with Attachments F-1 and F-2 for the applicable option year. The Contractor acknowledges and agrees that it is contractually obligated, upon exercise of an option by the Regional Transit Authority, to provide the services described hereunder, in satisfaction of all requirements of this Agreement, at the rates established for the applicable option year.

(c) Extensions. -- Upon agreement of the Parties, this Agreement may be extended on a month-to-month basis at the expiration of the Contract Term, for a total period not to exceed one year (inclusive of the time period by which the Regional Transit Authority may unilaterally extend the Agreement pursuant to subsection (b)(1) of this Section.)

## **SEC. 5 COMPENSATION FOR SERVICES**

(a) Basis for Compensation.

(1) The Contractor will be compensated on the basis of a Monthly Service Payment calculated as follows:



- (i) 1/12 of the applicable Annual Service Payment for fixed costs for all service modes; plus
- (ii) the applicable Revenue Service Hour Rates for each service mode multiplied by the actual Revenue Service Hours performed for that service mode in the Contract Month; with
- (iii) adjustments resulting from the application of the Annual Utility Consumption Adjustment; minus
- (iv) adjustments for Deductions (net of Incentives) assessed by the Regional Transit Authority in accordance with Section 22 of the Agreement.

The Contractor's Bus Revenue Service Hour Rate, Ferry Revenue Service Hour Rate, Streetcar Revenue Service Hour Rate, ADA Paratransit Revenue Service Hour Rate, Bus Special Services Revenue Service Hour Rate and Streetcar Special Services Revenue Service Hour Rate as of the Commencement Date are set forth in Attachment F-2 along with the Escalation Factor necessary for the calculation of modal Revenue Service Hour Rates in years of operation subsequent to the first year of the initial base term of the Agreement (as defined in Section 4(a) of this Agreement), as well as the Annual Utility Adjustment.

(2) The Regional Transit Authority shall compensate the Contractor for transition activities during start up prior to the Commencement Date in accordance with Section 6 of this Agreement.

(3) The Regional Transit Authority may increase or decrease the number of Revenue Service Hours by service mode by up to fifteen (15) percent on an annual basis without impacting the modal Revenue Service Hour Rates. However, in the event that the Regional Transit Authority increases or decreases the number of Revenue Service Hours in a service mode by greater than fifteen (15) percent on an annual basis, the Revenue Service Hours Rate for that service mode may be subject to modification in accordance with Section 21(d) of this Agreement.

(b) Scope of Compensation.

The compensation provided to the Contractor as described in this Section shall cover the costs of performing the Scope of Services to be provided under this Agreement and complying with the requirements set forth herein, including: (A) all costs of maintaining and repairing the Revenue Vehicles and replacing Vehicle components and parts as necessary; (B) all costs of maintaining and repairing the Non-Revenue Vehicles (whether supplied by Regional Transit Authority or the Contractor) and replacing Vehicle components and parts as necessary; (C) the costs of all equipment and supplies necessary for the performance of services (other

than Equipment provided by the Regional Transit Authority); (D) all costs of maintaining and repairing all Equipment or supplies and replacing supplies, if necessary; (E) all costs of maintaining and repairing the Facilities and maintaining and repairing the Equipment therein; (F) all costs of Contractor personnel providing management, operations, maintenance, dispatch and related services under this Agreement, including all costs of employee wages, salaries, health benefits, retirement, and other employee benefits and all costs of training; and (G) all costs associated with the implementation of the plans and programs submitted by the Contractor in its response to the RFP (or BAFO or post-award in accordance with Section 3 of this Agreement, as appropriate). The Contractor will have no other right or claim to compensation, payment, or reimbursement from the Regional Transit Authority, except as otherwise expressly provided in this Agreement.

(c) For purposes of this Section, capitalized terms that are not defined in Section 1 of this Agreement shall have the meaning provided in Attachment F-1.

## **SEC. 6 TRANSITION AND START-UP**

(a) Timing. -- The Contractor shall commence its Transition and Start-up activities immediately upon receipt of the NTP and shall complete all those activities by September 1, 2019, at which time the Contractor shall assume full responsibility for Revenue Service under this Agreement.

(b) Contractor Duty. -- The Contractor shall be responsible for carrying out an effective and smooth transition and start-up process, in accordance with its updated Transition and Start-up Plan, as Approved by the Regional Transit Authority, which will assure that it is capable of assuming responsibility for all required operations by the Commencement Date. The Transition and Start-up Plan, as Approved by the Regional Transit Authority, shall be binding on the Contractor.

(c) Vehicles and Facilities. -- The Regional Transit Authority will provide the Contractor access to at least one Revenue Vehicle of each type to be used by the Contractor in the provision of service under this Contract, for purposes of training employees during the transition and start-up period. The Contractor shall be responsible for securing an offsite location for training, interviewing prospective employees, and related transition and start-up activities.

(d) Training. -- The Contractor shall assure that all existing Vehicle operators who remain in service under this Agreement have at least ten (10) hours of training, which shall include refresher courses on safety, defensive driving, customer service, and fare policy. Such

refresher training shall be scheduled to accommodate the work schedule of the existing employees. Training of employees who have had a Vehicle accident within the last twelve (12) months shall be completed no later than thirty (30) calendar days after the Commencement Date. All other employees shall be trained in accordance with the Contractor's Training Program, including refresher courses identified in that Program or otherwise deemed to be reasonably necessary by the Contractor, within ninety (90) calendar days after the commencement of Revenue Service.

(e) Initial Vehicle and Equipment Inspection.

(1) During the transition and start-up period, the Contractor shall participate with the Regional Transit Authority in an acceptance inspection, in accordance with this subsection, of all Revenue Vehicles, the Regional Transit Authority-provided Non-Revenue Vehicles, and Equipment (including farebox and related fare collection Equipment) for purposes of establishing the overall condition of the Vehicles and Equipment as of the time the Contractor commences work under this Agreement.

(2) The inspection under this subsection shall be performed by an independent third party, selected by the Regional Transit Authority, who is experienced in transit operations and maintenance and Vehicle and Equipment inspections. The Regional Transit Authority shall be responsible (either directly or through reimbursement from the prior contractor) for the expenses of such inspection.

(3) The Contractor shall designate an individual, with decision-making authority, to be the Contractor's representative in the Vehicle and Equipment inspection under this subsection and the Facility inspection under subsection (f) hereof.

(4) The purpose of the inspection under this subsection is to establish the condition of the Vehicle fleet and the Equipment, as of the inspection date, and to determine the specific repairs and maintenance that need to be performed in order to assure that all Vehicles and Equipment are in a safe and sound mechanical condition, properly serviced, and in good repair, normal wear and tear excluded.

(5) The cost of all repairs and additional maintenance to the Vehicles and Equipment determined to be necessary to meet the standards referenced in paragraph (3) shall be the responsibility of the Regional Transit Authority (either directly or through reimbursement from the prior contractor). If repairs have not been completed by the Commencement Date, the Regional Transit Authority may direct the Contractor to complete the repairs, or may elect to have such repairs performed by a third party or by the prior contractor. If the Regional Transit Authority directs the Contractor to complete the repairs, the Regional Transit Authority will

compensate the Contractor for the cost of any new or replacement parts or components needed to make the repair (at cost, with no mark-up) and for the reasonable labor costs of work required to complete the repair. Such costs will be separately invoiced by the Contractor (with supporting documentation) and paid by the Regional Transit Authority. All such work performed by the Contractor shall be completed by October 1, 2019 unless the Contractor demonstrates to the Regional Transit Authority's satisfaction that completion by that date is not feasible due to circumstances beyond the Contractor's control.

(6) If a substantial amount of repair work must be performed by the Contractor after the Commencement Date, the Regional Transit Authority will take that fact into account in the assessment of Deductions pursuant to Section 22 during the Contractor's initial period of Revenue Service under this Agreement.

(7) Prior to the termination of this Agreement, the Revenue Vehicles and Equipment assigned to the Contractor at that time shall be subject to the turnover audit and inspection process set forth in Section 11(d).

(f) Facility Inspection.

(1) During the transition and start-up period, the Contractor shall participate with the Regional Transit Authority in an inspection, in accordance with this subsection, of the Facilities to be used by the Contractor in providing services under this Agreement, including the office furniture at the Facilities. At the Regional Transit Authority's discretion, a Property Condition Assessment may be included in the Facility inspection process under this subsection.

(2) The purpose of the inspection under this subsection is to establish the condition of the Facilities, as of the inspection date, and to determine the specific repairs that need to be performed in order to assure that the Facilities are in a safe and sound condition, and in good repair, normal wear and tear excluded. The inspection shall include a walk-through or visit to the Facilities by the Contractor and the Regional Transit Authority. On the basis of this review, the Parties will develop and agree upon a "punch list" of the items that need to be repaired.

(3) The cost of all Facility repairs determined to be necessary under paragraph (2) hereof shall be the responsibility of the Regional Transit Authority (either directly or through reimbursement from the prior contractor). If all such repairs have not been completed by the Commencement Date, the Regional Transit Authority may direct the Contractor to complete such repairs, or may elect to have such repairs performed by a third party. In the event, the Contractor completes such repairs, the Regional Transit Authority will compensate the Contractor for the cost of any materials or supplies needed to make the repair

(at cost, with no mark-up) and for the reasonable labor costs of work required to complete the repair. Such cost will be separately invoiced by the Contractor (with supporting documentation) and paid by the Regional Transit Authority.

(g) Assumption of Responsibility by Contractor. -- Beginning on the Commencement Date, the Contractor shall assume responsibility for maintenance and repair of all Revenue Vehicles, Non-Revenue Vehicles, Equipment, and the Facilities in accordance with this Agreement.

(h) Review of Contractor Plans. – During the transition and start-up period, the Regional Transit Authority shall review each of the Contractor's plans and programs submitted under Section 3(b)(2) hereof and shall either: (1) Approve such plan or program as submitted; or (2) require the Contractor to make reasonable revisions to such plan or program, in which event the Contractor shall promptly make such revisions (after any necessary discussions with the Regional Transit Authority) and resubmit the plan or program involved to the Regional Transit Authority for its Approval. After Approval under this subsection, a plan or program shall be binding on the Contractor and may not be modified without prior written Approval by the Regional Transit Authority.

(i) Compensation. – The Contractor shall be compensated in the amount of \$XXX for its transition and start-up costs, which amount shall cover all the Contractor's reasonable costs and expenses during the transition and start-up period. Payment shall be made by the Regional Transit Authority in two equal installments, one in August 2019 and one in September 2019.

(j) Savings Provision. The Regional Transit Authority's assumption of responsibility for costs under subsection (e) or (f) hereof shall not reduce or otherwise effect the contractual obligation and financial responsibility of the prior contractor, to repair and maintain Vehicles, Equipment, and the Facilities in accordance with the October 3, 2008 agreement entered into by and between the Regional Transit Authority and Veolia Transportation Services, Inc., and subsequent amendments thereto.

## **SEC. 7 SPECIAL SERVICES**

(a) Special Services.

(1) The Regional Transit Authority may, in its discretion, request the Contractor to operate Special Services. Any such request shall be made in writing, and shall be made not less than ten (10) Days in advance of the date the Special Services will be needed. The Contractor shall provide the Special Services requested unless the Contractor

demonstrates to the satisfaction of the Regional Transit Authority that providing such services would have an adverse impact on its ability to provide the operations and maintenance services required under this Agreement.

(2) If the third party for whom Special Services are being requested is permitted, under its agreement with the Regional Transit Authority, to obtain such Special Services upon a notice or request period of less than ten (10) Days, the Contractor agrees it will make a good faith effort to provide such services within the timeframe requested, but not to the detriment of the Regional Transit Authority Revenue Service under the Agreement.

(b) Contractor Responsibility. – The Contractor is responsible for providing adequate staff, supervision, and maintenance capability to support Special Services provided under this Section.

(c) Rates and Other Terms. -- Compensation for Special Services shall be in accordance with the Contractor's Bus Special Services Revenue Service Hour Rate or Streetcar Special Services Revenue Service Hour Rate, as appropriate, and calculated pursuant to Attachments F-1 and F-2.

(d) Applicability of Terms. -- Except as otherwise expressly agreed in writing by the Regional Transit Authority and the Contractor, the terms and conditions of this Agreement and the other Contract Documents shall apply to any Special Services operated under this Section.

## **SEC. 8 INVOICES**

(a) Submittal. -- During the Contract Term, the Contractor shall submit an invoice for each Contract Month of operations to the Regional Transit Authority, no later than the 15<sup>th</sup> day of the following month, in the format prescribed by the Regional Transit Authority. Each invoice shall include all documentation and supporting information needed to calculate the payment due, as described in subsection (b).

(b) Supporting Materials. -- Invoices shall be prepared in a form provided by the Regional Transit Authority and shall be supported by the reports submitted by the Contractor in accordance with Section 23 of this Agreement and other documentation or information requested by the Regional Transit Authority.

(c) Regional Transit Authority Review and Payment.

(1) The Regional Transit Authority shall be entitled to make Deductions (net of Incentives) to each invoice due to the Contractor's failure to achieve Key Performance Measures specified in Section 22 of this Agreement.

(2) The Regional Transit Authority shall also be entitled to make the Annual Utility Consumption Adjustment to the Monthly Service Payment immediately following the end of a Contract Year. The Regional Transit Authority shall make this Annual Utility Consumption Adjustment in accordance with the timing and process set forth in Attachment F-2.

(3) Except as otherwise provided in paragraphs (4) and (5), payment, as revised in accordance with paragraphs (1) and (2), will be made by the Regional Transit Authority within thirty (30) calendar days after an invoice is received and approved.

(4) If the Regional Transit Authority determines, based on its review of an invoice, that payment has been requested for services that were not provided in accordance with this Agreement, or if the Regional Transit Authority otherwise questions or objects to the contents of an invoice, the Regional Transit Authority shall so notify the Contractor and give the Contractor the opportunity to correct the invoice. If the invoice is not corrected to the satisfaction of the Regional Transit Authority, the Regional Transit Authority may withhold payment of the disputed amount and make payment of any undisputed amount due.

(5) The Regional Transit Authority may, in its discretion, withhold an appropriate amount from any invoice at or near the end of the Contract Term in order to cover: (A) the cost or estimated cost of Facility repairs and/or maintenance (including Equipment at the Facilities) required as a result of the Facility turnover audit carried out under Section 13(b)(2) and (B) the cost or estimated cost of Vehicle repairs and/or maintenance required as a result of the Vehicle turnover audit carried out under Section 11(d).

(d) Audits and Reviews. – The Regional Transit Authority may, at any time, conduct an audit of any records kept by the Contractor that are directly or indirectly related to the services provided under this Agreement. Any overpayment or underpayment uncovered in such an audit may be charged or credited (as the case may be) against the Contractor's future payments. In addition, appropriate financial adjustments to future payments shall be made by the Regional Transit Authority based upon any inconsistency, irregularity, discrepancy, under-billing, or unsubstantiated billing revealed as a result of the audit. Prior to withholding payment or deducting amounts from future invoices, the Regional Transit Authority will give notice to the Contractor and provide the Contractor with an opportunity to state its position on the issue presented and provide corrected or updated information.

## **SEC. 9 STAFFING AND PERSONNEL REQUIREMENTS**

(a) Contractor Responsibility; Indemnification.

(1) The Contractor shall be solely responsible for the satisfactory work performance of all its employees as described in this Agreement or in any performance standard established by the Regional Transit Authority.

(2) The Contractor shall be solely responsible for payment of all its employees' salaries, wages, and benefits in accordance with applicable collective bargaining agreements. In addition, the Contractor shall be solely responsible for payment of any of its subcontractors. The Regional Transit Authority shall have no role in the determination of salaries, wages, benefits, or other terms and conditions of employment.

(3) Without any additional expense to the Regional Transit Authority, the Contractor shall comply with the requirements of employee liability, worker's compensation, unemployment insurance, social security, and the Americans with Disabilities Act. The Contractor shall hold Regional Transit Authority harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices, collective bargaining agreements, or statutory, regulatory, or contractual obligations to employees.

(b) General Manager. -- The Contractor shall designate a General Manager who shall oversee the proper operation of services under this Agreement and overall performance of the Work. The General Manager shall be 100 percent dedicated to providing services for the Regional Transit Authority under this Agreement, unless the Regional Transit Authority provides prior written Approval for a lesser time dedication. If the Regional Transit Authority Approves a variance to the time dedication level of the General Manager, this variance is subject to immediate reversal at the discretion of the Regional Transit Authority.

(c) Key Personnel.

(1) The Contractor shall maintain the Key Personnel identified in its Proposal and/or its BAFO (if applicable) throughout the Contract Term. The Key Personnel shall include, in addition to the General Manager, a Performance and Reporting Manager, an Operations and Safety Manager, a Maintenance Manager, and a Customer Service Manager. All of the Contractor's Key Personnel shall be 100 percent dedicated to providing services for the Regional Transit Authority under this Agreement unless the Regional Transit Authority provides prior written Approval for a lesser time dedication. None of these Key Personnel positions can be combined without the prior written Approval of the Regional Transit Authority. If the Regional Transit Authority Approves a variance to the time dedication level of any Key Personnel or a consolidation of any Key Personnel positions, the Regional Transit Authority



reserves the right to make appropriate adjustments to the Contractor's Monthly Service Payment, and also reserves the right to reverse or modify any such Approval at any time.

(2) The Contractor shall provide all Key Personnel and other senior staff with a copy of this Agreement and shall require all such individuals to read and review the Agreement. The Contractor shall submit a certification to the Regional Transit Authority signed by all Key Personnel and senior staff indicating they have read and understand this Agreement.

(d) Changes in Key Personnel.

(1) The Contractor shall not, without prior written notice to and prior written Approval by the Regional Transit Authority, remove or reassign any Key Personnel identified in its proposal, or appoint any new individual to any Key Personnel position (whether in an acting or permanent capacity), at any time during the Contract Term; provided that the Contractor may, following written notice and explanation to the Regional Transit Authority, remove any such individual for misconduct or cause pursuant to the Contractor's established personnel policies.

(2) If the Contractor fails to provide the required Key Personnel, or removes Key Personnel without the Regional Transit Authority's prior written Approval, the Contractor shall be subject to Deductions under Section 22, and the Regional Transit Authority may make appropriate adjustments in the Contractor's Monthly Service Payment until the position is filled.

(e) Requirement for a Qualified Workforce; Compliance with Staffing Plan.

(1) The Contractor shall provide and maintain throughout the Contract Term a sufficient number of properly qualified personnel, having the necessary skills, training, and experience to operate and maintain the Revenue and Non-Revenue Vehicles and the Equipment, and systems used to perform the Work, to maintain the Facilities, and to provide all other services and tasks required in the performance of the Work.

(2) The number, qualifications, experience, and class, craft, or position of the personnel provided shall, at a minimum, be in accordance with the Staffing Plan submitted by the Contractor in its proposal and/or its BAFO (if applicable), as subsequently Approved by the Regional Transit Authority. The Contractor shall comply with its Approved Staffing Plan throughout the Contract Term. The Contractor agrees to make appropriate modifications in the Staffing Plan (e.g. by increasing the number of employees or changing the mix of employee positions or classes), as necessary to meet changing demands of the service over the Contract Term. Any such modifications in the Staffing Plan shall be submitted to the Regional Transit Authority for its review and Approval.

(3) All of the Contractor's employees, at all times while on duty in the performance of service required under this Agreement, shall be neatly and cleanly dressed and

shall at all times maintain a courteous and cooperative attitude in their contact with the public. All such personnel who are likely to be in contact with the public shall be trained by the Contractor to give accurate information concerning routes and schedules of services as Approved by the Regional Transit Authority.

(4) The Regional Transit Authority Executive Director shall have the right to demand the removal from services under this Agreement, for reasonable cause, any personnel (including Key Personnel and supervisory staff) furnished by the Contractor. Any such demand shall be made in writing, and shall be complied with promptly by the Contractor.

(f) Uniforms and Appearance. -- The Contractor shall assure that its employees comply with the Regional Transit Authority Uniform Policy set forth in Attachment D. Vehicle operators shall be in uniform acceptable to the Regional Transit Authority, and shall wear tags clearly displaying their names while performing their duties and shall display nameplates in their Revenue Vehicles. Upon notice from the Regional Transit Authority concerning any conduct, demeanor, or appearance of any employee not conforming to these requirements, the Contractor shall take all steps necessary to remove or alleviate the cause of the objection. Employees shall not wear uniforms while off duty.

(g) DMV and Background Checks.

(1) The Contractor shall conduct pre-employment Department of Motor Vehicles (DMV) checks of all prospective employees and shall check DMV records at least every six (6) months for accidents, vehicle code violations, and valid driver's licenses of all employees whose jobs require them to operate the Regional Transit Authority Vehicles. The Contractor shall have any Approved subcontractors conduct pre-employment DMV checks of all prospective employees and check DMV records at least every (6) months for accidents, vehicle code violations, and valid driver's license of all employees whose jobs require them to operate the Regional Transit Authority Vehicles. The Contractor shall notify the Regional Transit Authority of the results of such checks and the corrective actions taken, if any. The Contractor shall also conduct pre-employment criminal background checks on all prospective employees and shall not, subject to the qualifications in paragraph (3) below, knowingly hire any individual with a felony conviction or other offense that makes such individual unsuitable for work on services under this Agreement.

(2) The Contractor shall also conduct annual criminal background checks on all employees and shall not, subject to the qualifications in paragraph (3) below, knowingly retain in service any individual with a felony conviction or other offense that makes such individual unsuitable for work or services under this Agreement.

(3) Any decision by the Contractor to fail or refuse to hire or retain an individual due to a prior felony conviction or other offense shall be made on a case by case basis, and shall be justified on the grounds it is job related in accordance with Equal Employment Opportunity Commission requirements.

(h) Specific Qualifications for Operators, Mechanics, and Supervisors.

(1) The Contractor shall assure that all operators, maintenance, and other personnel are fully and adequately trained, and shall have all required licenses and certifications, to carry out their respective responsibilities regarding the operation, maintenance, and fueling of the Vehicles employed in services under this Agreement, and the operation and maintenance of all Equipment and systems used in the performance of the Work, including fareboxes, destination signs, surveillance equipment and the Clever Device System. The Contractor shall also assure that all operations and maintenance trainers are fully and adequately trained on the MMS.

(2) The Contractor shall require each Vehicle operator to have and maintain all required Louisiana driver's licenses, medical certificates, and other Louisiana DMV required driver qualifications.

(3) The Contractor shall assure that the minimum maintenance staffing levels and other requirements set forth in the Contractor's Approved Staffing Plan are complied with throughout the Contract Term.

(4) The Contractor shall require all maintenance personnel who operate a Vehicle to adhere to the same training and licensing as the Contractor's Vehicle operators (other than a passenger endorsement).

(5) The Contractor shall require each operator and road supervisor to have an accurate timepiece available and nameplate and in clear sight at all times during the operation of any Revenue Vehicle or other performance of their duties, provided that the controlling time for all operations and services under this Agreement shall be that shown on the Clever Device System.

(6) The Contractor shall require each operator to have a driver's license and medical card in his or her possession at all times during the operation of a Revenue Vehicle or other performance of his or her duties. The Contractor shall randomly check operators to assure full compliance with this requirement.

(7) The Contractor shall assure that all employees with responsibilities for the implementation of the Clever Device System are fully and adequately trained to carry out those responsibilities.

(i) Additional Personnel and Services. -- If service under this Agreement is increased, requiring changes in the number of Revenue Vehicles, Revenue Service Miles, number of routes, and/or service frequency, the Contractor must have available, or be able to acquire in a timely fashion, any additional personnel required for the provision of such additional service.

(j) Compliance with Training Plan. -- The Contractor shall comply with its Approved Training Program throughout the Contract Term. The Program shall include the designation of an employee as the Maintenance Training Coordinator, and shall provide for ongoing training of mechanics and the development of technical skills of mechanics and other employees throughout the Contract Term.

(k) Compliance with Drug and Alcohol Testing Policy. -- The Contractor shall comply with the Drug and Alcohol Testing Policy it submitted in response to the RFP in compliance with 49 CFR Parts 653 and 654, and shall comply with that policy and with other drug and alcohol testing rules and regulations as may be required by the FTA, at all times during the Contract Term. The Contractor shall provide quarterly reports to the Regional Transit Authority, maintain random testing information and make it available for FTA reviews/audits, and shall make other information regarding its surveillance program available to the Regional Transit Authority upon request. The Regional Transit Authority reserves the right to oversee monthly and random testing. The Contractor's drug and alcohol testing and reporting shall specifically cover the Contractor employees performing services for the Regional Transit Authority under this Agreement. Any part of the Policy which is held to be unenforceable will not affect the other provisions of the Policy.

(l) Minimum Wage. -- The Contractor shall comply with the Minimum Wage requirements of the City of New Orleans for employees of City Contractors set forth in Attachment E and with the requirements of the collective bargaining agreement in compliance with subsection (p) of this Section and shall also comply with any modifications to those requirements that take effect during the Contract Term. These requirements are intended as minimum wage levels for work performed by the Contractor's employees under this Agreement. The Regional Transit Authority reserves the right, during this Agreement term, to require documentation of compliance with these requirements through payroll records or other evidence.

(m) Worker's Compensation. -- The Contractor certifies that it is aware of the provisions of Louisiana Revised Statutes Section 1161 of Title 23, Labor and Workers' Compensation which require every employer to be insured against liability for worker's

compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees that, as required by Section 27(a)(3) of this Agreement, it will comply with such provisions and submit satisfactory evidence to the Regional Transit Authority of such insurance or self-insurance before commencing the performance of Work under this Agreement and annually thereafter.

(n) Terms of Hiring. – Except for those employees expressly hired by the Regional Transit Authority, all employees of the Regional Transit Authority's incumbent contractor (with the exception of senior managers of the incumbent contractor, as provided in Section 9 of the second amendment to the October 3, 2008 Transit Management Agreement) shall be hired by the Contractor into comparable positions, without examination, and such employees shall be credited with their years of service for purposes of seniority, vacations, and other applicable benefits in accordance with the incumbent (previous) contractor's records and applicable collective bargaining agreements. The Contractor shall assume the obligations of the incumbent contractor with regard to wages, hours, working conditions, health and welfare, and retirement provisions for employees. No employee shall suffer any worsening in his or her wages, seniority, retirement, vacation, health and welfare insurance or any other benefits. The Contractor shall be liable for any claims demonstrated to be valid that an employee was worsened in the hiring process. Nothing under this subsection (n) precludes the Contractor from dismissing an employee for cause, for failure to satisfy applicable drug and alcohol testing requirements, or for failure to comply with any applicable local, State or Federal requirements.

(o) Third Party Agreements. – Unless otherwise expressly agreed to in writing by the Regional Transit Authority, all obligations of the Contractor arising under any contract or agreement between the Contractor and a third party relating to the services the Contractor provides hereunder (Third Party Agreement) are the sole responsibility of the Contractor, and: (1) shall not be interpreted or applied to impose any financial, legal, or other obligations on the Regional Transit Authority; and (2) shall not be binding on or applicable to any subsequent contractor providing operations and maintenance services for the Regional Transit Authority. In particular, any such Third Party Agreement that has a term or duration that extends beyond the then-current term of this Agreement shall not impose obligations on, apply to, or otherwise affect the Regional Transit Authority or any subsequent contractor.

(p) Section 13(c) Obligations.

(1) Except as provided in paragraphs (2) and (3), the Regional Transit Authority shall be administratively and financially responsible for obligations under Section

5333(b) of Title 49, United States Code (generally referred to as Section 13(c)) and the applicable Section 13(c) labor protection arrangements.

(2) The Contractor shall be responsible for any Section 13(c) claims or obligations that arise out of acts or omissions of the Contractor that are not expressly directed or authorized by the Regional Transit Authority. In addition, the Contractor shall cooperate with the Regional Transit Authority in the resolution or defense of any Section 13(c) claims for which the Regional Transit Authority has responsibility (such as through the provision of employee payroll records and other employee information, in accordance with existing law), and in the implementation of any Section 13(c) remedies.

(3) As the Regional Transit Authority's contractor and the employer of public transit employees, the Contractor is obligated to bargain collectively with any union representing its employees, to comply with the terms and conditions of any collective bargaining agreement it enters into with such union, and to comply with the requirements of subsection (n), Terms of Hiring, of this Section. Any Section 13(c) claims relating to the failure of the Contractor to comply with these obligations shall be the responsibility of the Contractor.

(q) Accrued Liabilities. -- The Contractor shall be responsible for the payment of all liabilities to its employees accrued during the Contract Term (including any option periods), including accrued vacation, sick time, and any other benefits accrued under the terms of any collective bargaining agreement between the Contractor and the union representing its employees or under the terms of any employment contract or agreement. All such payments shall be made by the Contractor at the end of the Contract Term and no additional compensation shall be provided by the Regional Transit Authority for such accrued liabilities. The Contractor shall not have any obligation for the liabilities of the prior contractor to its employees.

(r) Limitation. -- Nothing in this Section shall be construed as requiring the Contractor to hire any employee who fails to successfully complete drug and alcohol testing or to pass a physical examination appropriate to his or her position.

## **SEC. 10 OPERATIONS STANDARDS AND PERFORMANCE REQUIREMENTS**

(a) Contractor Responsibility. -- The Contractor shall be responsible for project management according to the operations standards and performance requirements set forth in this Section, the other provisions of this Agreement, and the other Contract Documents. The Regional Transit Authority may, after consultation with the Contractor, establish additional standards and procedures that are appropriate and reasonable for operation of service.

(b) Operating Performance Standards. -- The Contractor shall adhere to the following operating performance standards:

(1) Vehicles shall be operated with due regard for the safety, comfort, and convenience of passengers and the general public.

(2) Service shall be provided as scheduled or according to any adjusted schedule established by the Regional Transit Authority, including route modifications required as a result of a declared emergency under Section 26.

(3) The Contractor shall strive to maintain on-time performance in accordance with published schedules.

(c) Personnel Performance Standards. -- The Contractor shall adhere to the following personnel performance standards:

(1) Regularly assigned operators or a trained back-up must be available daily to ensure consistent and reliable service under this Agreement.

(2) All Contractor personnel are responsible for knowledge of the service. Contractor personnel must maintain a courteous attitude, answering to the best of their ability any questions from the public regarding the provision of service. Customer service training must include a focus on passenger relations including sensitivity training. Contractor personnel must also promptly report all passenger complaints and/or operation problems to the General Manager or his or her designee. All passenger complaints must be addressed and reported to the Regional Transit Authority in accordance with Sections 23(b)(5) and 24.

(3) Operators must accurately and completely submit the required operating reports each day.

(4) While in uniform, operators must be in conformance with the Regional Transit Authority uniform regulations, whether on-duty or off-duty.

(d) Adherence to Schedule.

(1) The Contractor shall adhere to the system schedule as established by the Regional Transit Authority, and shall assume responsibility for on-time performance on each route. The Regional Transit Authority will use the Clever Device System to monitor schedule adherence. The Contractor's route-by-route schedule adherence/on-time performance will be evaluated utilizing data from the Clever Device System. The Regional Transit Authority will review service on each route by departures at the first and subsequent Time-Points up to the last Time-Point. On-time performance at the last Time-Point will be evaluated by arrival time. Early arrivals at the last Time-Point will not be assessed Deductions under Section 22.

(2) On-Time departure is defined in Section 1 of this Agreement. Early departures from the final Time-Point will not be considered violations of on-time performance requirements.

(3) Routes on which there are major construction projects (as determined by the Regional Transit Authority) that go into effect and that cause more than ten (10) minute delays on 30 percent or more of the Trips will be exempted from the assessment of Deductions under Section 22. Construction delays will be validated using the Clever Device System, or other electronic means, as well as on-street evaluation or observation. As soon as practical, the Regional Transit Authority will work with the Contractor to modify the schedule to make adjustments to running time at the impacted portion of the route to mitigate delays. Once those service changes are in effect, the route will then continue to be considered in the On-Time performance evaluation and delays may be subject to applicable Deductions.

(4) The Contractor shall be responsible for ensuring that no mid-Trip relief (i.e., in-service change in Vehicle operators) occurs on any route or Trip operated by the Contractor under this Agreement.

(e) Detours.

(1) The Contractor shall be responsible for responding to and adjusting service in response to planned and unplanned detours. The Regional Transit Authority will provide information regarding detours that may impact service, routes, bus stops, etc., as that information is received. The Contractor shall be responsible for reviewing information, further assessing impact, and submitting detour plans, when necessary, within the timeframes established in the notice. Information on detours shall be disseminated by the Contractor as directed by the Regional Transit Authority. Information will include, but is not limited to, routes impacted and direction, the turn-by-turn detour information, bus stop closures or those that will be missed and/or temporary provisions for boarding and alighting, as well as duration of the event/project. The Contractor shall also be responsible for disseminating information to operators; monitoring detour adherence; and responding to the Regional Transit Authority's requests for information received through dispatch. The Contractor shall also provide any detour information it directly receives to the Regional Transit Authority for processing and communication.

(2) The Contractor shall assume responsibility for posting signage and inputting information into the Clever Device System for detours. For significant detours or those impacting a significant amount a service, the Regional Transit Authority may request to have



Contractor personnel be onsite and will work with the Contractor on developing plans and coverage.

(f) Farebox. -- The Regional Transit Authority has provided several reports to support monitoring and managing farebox function and maintenance. The Contractor has access to the report system and may run reports as frequently as desired. The Contractor shall be responsible for monitoring and responding on a timely basis to any issues or trends identified in these reports. The Regional Transit Authority may, at its discretion, request a report on actions taken in response to the reports.

## **SEC. 11 VEHICLE MAINTENANCE, APPEARANCE, AND RELATED REQUIREMENTS**

(a) Revenue Vehicles. – The Regional Transit Authority shall provide sufficient Revenue Vehicles, including spares, for use by the Contractor in providing the services required under this Agreement. The Regional Transit Authority-provided Revenue Vehicles shall not be used for any non-revenue purposes with the exception of training. The list of Revenue Vehicles provided to the Contractor at the commencement of services under this Agreement is set forth in Attachment B-1.

(b) Non-Revenue and Other Vehicles. – The Regional Transit Authority shall provide [Insert No.] Non-Revenue Vehicles for supervision, and other Non-Revenue Vehicles as specified in Attachment B-1 for use by the Contractor in providing the services required by this Agreement. The Regional Transit Authority-provided Non-Revenue Vehicles may be used by the Contractor solely for the performance of services under this Agreement.

(c) Initial Inspection and Condition Upon Return.

(1) Prior to the Commencement Date, the Contractor shall participate with the Regional Transit Authority in an inspection of all the Regional Transit Authority-provided Revenue Vehicles, Non-Revenue Vehicles and Equipment in accordance with Section 6 of this Agreement. Upon the Commencement Date, the Contractor shall assume responsibility for maintenance and repair of all Revenue Vehicles, Non-Revenue Vehicles, and Equipment in accordance with this Agreement.

(2) Upon termination of this Agreement (for whatever reason), the Contractor shall warrant that the Revenue Vehicles, Non-Revenue Vehicles, and Equipment have been properly serviced and maintained, and are in good repair, in accordance with this Agreement, and shall return such Vehicles to the Regional Transit Authority in a safe and sound mechanical condition, subject to ordinary wear and tear.

(d) Turnover Audit Process.

(1) At least thirty (30) Days prior to the termination date of this Agreement, the Regional Transit Authority, the Contractor, and the company (if any) taking over operations and maintenance responsibility (New Contractor), shall participate in the turnover audit process set forth in this subsection. Unless the Regional Transit Authority determines otherwise, this audit will be consolidated with the initial Vehicle, Equipment, and Facility inspection conducted during the transition and startup period of the New Contractor.

(2) The turnover audit will be performed by an independent third party, selected by the Regional Transit Authority, who is experienced in transit Vehicle operations and maintenance and Vehicle and Equipment inspections. The Contractor shall be solely responsible for the cost and expense of the audit.

(3) The purpose of the audit will be to establish the condition of the Vehicle fleet and the Equipment, as of the audit date, and to determine the specific repairs and maintenance that needs to be performed in order to assure that all Vehicles and Equipment will meet the standards referenced in subsection (c)(2). The audit shall also include, at the discretion of the Regional Transit Authority, an inspection of the Facilities to assure that they meet the standards set forth in Section 13(b)(2) of this Agreement.

(4) The Contractor shall be solely responsible for promptly completing all repairs and/or maintenance to the Vehicles, Equipment, and Facilities that are identified in the audit as necessary to meet the standards, in subsection (c)(2) or Section 13(b)(2), as applicable, and shall also be solely responsible for the cost of all such repairs and maintenance. The Contractor shall not be eligible for any additional compensation for the costs of the audit or the costs of the necessary repairs or maintenance resulting therefrom.

(5) If any dispute arises in the turnover audit process, the Regional Transit Authority shall first attempt to facilitate the resolution of such dispute through meetings and conferences with the Contractor, the New Contractor, and the independent third party. If the dispute remains unresolved for thirty (30) Days, the Regional Transit Authority shall require the Contractor and the New Contractor to participate in a mediation process conducted by a neutral third party selected by the Regional Transit Authority. If the dispute is not resolved in a timely fashion through this mediation, the Regional Transit Authority will invoke a mandatory arbitration process, using an outside neutral arbitrator selected by the Regional Transit Authority, for a final and binding decision on all matters in dispute. In selecting a neutral mediator and/or arbitrator under this paragraph, the Regional Transit Authority will consult with, and obtain recommendations from, the Contractor and the New Contractor.

(6) By execution of this Agreement, the Contractor hereby consents to the mediation and arbitration process described in paragraph (5) hereof and further agrees to comply fully with any resulting arbitration decision.

(7) The costs of any mediation or arbitration under this subsection shall be borne equally by the Contractor and the Regional Transit Authority.

(e) Spare Ratio. – The Regional Transit Authority will supply the Contractor with a sufficient number of Revenue Vehicles in order to provide at least a [five (5)] percent spare ratio. The Contractor will be responsible for maintaining a spare ratio of at least [five (5)] percent throughout the Contract Term. If the Regional Transit Authority supplies sufficient Vehicles to provide a higher spare ratio, the Contractor shall maintain that ratio throughout the Contract Term.

(f) Vehicle Maintenance and Condition Standards. -- The Contractor shall, at all times during the Contract Term, comply with its approved Vehicle Maintenance Program and with the mechanical, safety, and appearance standards set forth in Attachment C-1. The Contractor shall, at its sole expense, cause all components of each Revenue Vehicle and Non-Revenue Vehicle, including body, engines, transmissions, tires, frame, furnishings, mechanical, electrical, pneumatic, hydraulic, or other operating systems, to be maintained in proper working condition and free from damage and malfunction. The Contractor shall, at its sole expense, cause any such Vehicle damaged in any accident or otherwise to be repaired or replaced. In the case of damage impairing the safe mechanical operation or proper appearance of the Vehicle, such replacement must be made immediately. Any Contractor-supplied Vehicles must, at a minimum, be maintained using the same preventive maintenance, graphic, and cleanliness standards as the Regional Transit Authority-provided Revenue Vehicles and Non-Revenue Vehicles.

(g) Vehicle Appearance.

(1) The Contractor shall be responsible for maintaining the appearance of all Revenue Vehicles and Non-Revenue Vehicles. All Vehicles must display a clean and glossy appearance each time the Vehicle departs the operating facility to enter Revenue Service and must be kept clean including, but not limited to, the following actions: (A) the exterior (including front and rear) must be washed at least three (3) times a week (except for ferries which must be cleaned at least weekly); (B) interiors must be swept or vacuumed daily; (C) all dirt, debris, graffiti, and trash must be removed daily; and (D) any worn, broken, cut, torn or vandalized components that are visible, or accessible by the public, must be repaired or replaced promptly to eliminate hazards, minimize discomfort, and/or maintain appearance; and (E) Vehicles must

be waxed at least once each year. The regular cleaning procedure must include, but need not be limited to, all areas of the Vehicle including bumpers, wheels, aluminum wheels, windows, panels, and seats. Wheels should be free of dirt and debris and maintained in a high gloss state/finish.

(2) All Revenue Vehicles and Non-Revenue Vehicles, including support Vehicles provided by the Contractor, shall have the decals, graphics and/or logos prescribed or approved by the Regional Transit Authority, located on the Vehicles in accordance with the Regional Transit Authority's direction, and shall have no other markings or brandings.

(h) Inspections.

(1) Each Revenue Vehicle and Non-Revenue Vehicle must receive a daily pre-trip inspection by the operator scheduled to operate the inspected Vehicle prior to being placed in service and at each change in operators. The operator will utilize pre-trip technology provided by the Regional Transit Authority. If the technology is not available, then the operator will conduct and supply a manual pre-trip back-up. Daily pre-trip inspections must be supplemented by regular time and mileage maintenance inspections to ensure safe and proper operating condition of Vehicles. A record of all such inspections shall be kept by the Contractor in the Drivers' Daily Reports and shall be available to the Regional Transit Authority upon request.

(2) The Contractor shall maintain a satisfactory Louisiana vehicle inspection status throughout the term of this Agreement. If the Contractor receives an unsatisfactory rating from a State or municipal authority, the Contractor shall so notify the Regional Transit Authority immediately by telephone and in writing and shall identify steps which will be taken to correct any deficiencies. If any Revenue Vehicle is withdrawn from service by a State or another cognizant authority, including the Regional Transit Authority, as a result of an unsatisfactory rating, such Vehicle shall not be operated, and the Contractor shall be subject to Deductions under Section 22 of this Agreement, until a satisfactory inspection report is obtained. If the Vehicle is withdrawn from service due to a defect or failure which the Regional Transit Authority agrees was due to the manufacturer, or due to circumstances beyond the Contractor's control as described in Section 22(c), the Deductions shall not apply.

(3) The Regional Transit Authority reserves the right, in its sole discretion, to review maintenance records, and to inspect and reject temporarily or permanently, by notice to the Contractor, any Vehicle which the Regional Transit Authority deems unacceptable. In the event any Revenue Vehicle or Non-Revenue Vehicle is rejected temporarily by the Regional Transit Authority as a result of deficient Vehicle condition or appearance, the Contractor shall be

subject to Deductions under Section 22, until the condition is corrected by the Contractor to the satisfaction of the Regional Transit Authority. In the event any Revenue Vehicle or Non-Revenue Vehicle is rejected permanently by the Regional Transit Authority as a result of Vehicle condition, the Contractor shall be responsible: (A) during the first half of such Vehicle's useful life, for the replacement cost of such Vehicle (including on-board Equipment); and (B) thereafter, for the straight line depreciated value of such Vehicle or the amount of any insurance proceeds received, whichever is greater.

(i) Preventative Maintenance.

(1) The Contractor shall perform routine preventive maintenance inspections and servicing on Revenue Vehicles at intervals of 6,000 miles or the recommended Vehicle manufacturer's specifications, whichever is lower, and on Non-Revenue Vehicles supplied by the Regional Transit Authority at intervals of 3,000 miles or the recommended Vehicle manufacturer's specifications, whichever is lower.

(2) The Contractor shall also conduct more extensive inspection and servicing of all Revenue Vehicles and Non-Revenue Vehicles at 12,000 mile intervals or as specified by the transit Vehicle manufacturer, whichever is lower.

(3) The Contractor shall conduct an annual or 48,000-mile preventive maintenance inspection containing all items required by the component manufacturer.

(4) In no event shall the Contractor be more than 500 miles late in any preventative maintenance inspection.

(5) The Contractor shall also conduct weekly brake/safety inspections, and shall record the results of those inspections in the appropriate Vehicle file.

(j) Parts and Supplies. -- In carrying out all scheduled and unscheduled Vehicle maintenance and repairs, the Contractor shall use parts and supplies from the original Equipment manufacturer (OEM), unless the Regional Transit Authority provides advance written Approval for the use of specific after-market non-OEM products and supplies.

(k) Fluid Analysis. -- As part of its maintenance program, the Contractor shall implement a Regional Transit Authority-Approved fluid analysis program. At appropriate intervals, the Contractor shall retrieve samples of the required fluids and have the samples analyzed at a facility Approved by the Regional Transit Authority, at the Contractor's sole expense. The fluids covered by this program and the applicable requirements are as follows:

- (1) Engine oil shall be analyzed in advance of each preventive maintenance inspection and each unscheduled oil change.

- (2) Transmission fluid shall be analyzed each time it is drained and replaced, in accordance with the applicable schedule, and at a minimum shall be analyzed annually.
- (3) Coolant, hydraulic, and differential fluid shall be analyzed at least annually.

(l) Synthetic Lubricants. -- The Contractor shall use synthetic lubricants (if available) in the engines, transmission, differential, and hydraulic reservoirs of all Regional Transit Authority supplied Vehicles. The Contractor shall obtain the Regional Transit Authority's advance Approval of any synthetic lubricants it intends to use in the Revenue Vehicles and Non-Revenue Vehicles and any changes in the Regional Transit Authority-approved synthetic oil program.

(m) MMS Record Keeping.

(1) The Regional Transit Authority provides an automated Maintenance Management System (MMS) for the Vehicles, to be used as a stand-alone system or in addition to the Contractor's standard Vehicle record keeping system. The Regional Transit Authority reserves the right to require the use of different software systems for operations and for maintenance reporting, and also reserves the right to require the use of additional or alternative software in the MMS at any time during the Contract Term.

(2) The Contractor shall use the MMS to record, monitor, and report on all Revenue Vehicle and Non-Revenue Vehicle maintenance, inspections, parts inventory and utilization, fueling, and repair activities. In addition, the Contractor shall use the MMS to record and report on warranty repair information in accordance with Section 12(b) of this Agreement. The MMS shall be directly interfaced to the Regional Transit Authority's computer system. Within forty-eight (48) hours after work order completion, the Contractor shall enter all of the required data into the MMS system.

(n) Applicable Codes and Regulations. -- The Contractor shall be responsible for assuring that all Vehicles utilized in service under this Agreement are safe for operation on public streets and freeways and meet all requirements of the Louisiana Vehicle Code. All parts of Vehicles and all Equipment mounted on or in the Vehicles shall conform to the Louisiana Vehicle Safety Standards, and the Americans with Disabilities Act (ADA). Each Revenue Vehicle is required to be inspected at least annually in accordance with Article XI, Chapter 154 of the New Orleans City Code. Ferry vessels shall be inspected in accordance with the regulations of the United States Coast Guard. Results of such inspections shall be transmitted

to the Regional Transit Authority, and any applicable signed certification shall be displayed or carried on the Vehicles.

(o) Response Times and Actions.

(1) In the event of a trouble call, the Contractor shall promptly dispatch a substitute Revenue Vehicle and call a tow truck (if appropriate). The maximum response time (i.e., the time between the receipt of a trouble call until the arrival of a substitute Vehicle) shall be one (1) hour. The Regional Transit Authority reserves the right to establish additional criteria regarding the reliability of the Contractor's response in the event of breakdowns.

(2) The Contractor shall remove any Vehicle disabled by accident, mechanical problem, or any other reason, from the scene within two (2) hours after the first report or as soon as possible following the completion of any investigation being performed by the responding law enforcement agency. The Contractor shall comply with all applicable state and local height restrictions in towing or otherwise removing Vehicles.

(p) Permits and Fees.

(1) The Regional Transit Authority shall be responsible for initial licensing and registration fees which are specifically required by the Department of Motor Vehicles (DMV) or other governmental bodies for all Regional Transit Authority supplied Vehicles operated under this Agreement (including the cost of initial license plates). The Contractor will be responsible for all fees associated with obtaining duplicate and replacement license plates.

(2) The Contractor shall be responsible for assuring that all Revenue and Non-Revenue Vehicles are equipped with a license plate and valid Inspection Certificate, and that registration and proof of insurance are on board each Vehicle at all times. The Contractor shall also be responsible for the cost of replacing license plates on Revenue and Non-Revenue Vehicles when necessary due to damage or wear and tear (e.g., because of chemicals used for cleaning).

(3) The Contractor shall be responsible for all parking tickets, moving violations, and fees incurred in connection with the use of any Vehicle under this Agreement.

(q) Engines and Transmissions.

(1) Except as provided in paragraph (2) below, the Regional Transit Authority will be responsible for the cost of the replacement and/or rebuild or overhaul of engines and transmissions on the Revenue Vehicles at the end of their useful life.

(2) If the replacement, rebuild, or overhaul of an engine or transmission on a Revenue Vehicle is required (whether at the end of its useful life or otherwise) because of the Contractor's failure to perform required preventative maintenance in accordance with this

Agreement or because of other negligent acts or omissions by the Contractor, then the Contractor shall be responsible for the full cost of such replacement, rebuild, or overhaul, and shall not be eligible for any additional compensation therefor.

(3) For purposes of this subsection, the term “useful life” means 300,000 miles, unless the Regional Transit Authority determines, based on information from the Contractor and its own analysis, that replacement, rebuild, and/or overhaul of an engine or transmission is necessary at fewer miles or not necessary at the 300,000 mile mark.

## **SEC. 12 VEHICLE AND EQUIPMENT WARRANTY REPAIRS**

(a) Contractor Responsibility. -- The Contractor shall be responsible for the exercise and enforcement of all warranties relating to the Revenue Vehicles and Non-Revenue Vehicles and all systems, components, and subcomponents thereof, and all warranties relating to the Equipment, and shall also be responsible for taking all available actions to assure that all warranty covered repairs are performed in a timely fashion.

(b) Notice of Defects. -- If the Contractor detects a defect or malfunction within the applicable warranty period, the Contractor shall promptly notify the Regional Transit Authority of the actions it is taking to enforce the warranty. Following commencement of the warranty repair process, the Contractor shall promptly notify the Regional Transit Authority of any disagreements or disputes with the Vehicle or Equipment manufacturer or supplier regarding warranty coverage. Such notice shall include a description of the disagreement or dispute and a suggested plan for resolution. The Contractor shall also record all warranty repairs in the MMS.

(c) Training. -- The Contractor shall assure that all appropriate maintenance personnel receive a training class on warranty procedures for the Revenue Vehicles and Non-Revenue Vehicles and all systems, components, and subcomponents thereof and for the Equipment.

(d) Regional Transit Authority Role. -- The Regional Transit Authority agrees that it will take whatever actions may be appropriate to assist the Contractor in assuring timely warranty repairs and resolving any warranty disputes. Upon request of the Contractor, the Regional Transit Authority will directly contact the Vehicle or manufacturer or supplier to pursue the prompt resolution of warranty issues.

(e) Deductions. -- If the Contractor fails to satisfy its obligations regarding the maintenance of the Fleet, fails to implement and comply with its Preventive Maintenance Plan,



or fails to properly exercise and enforce all warranties relating to the Fleet and the Equipment therein, the Contractor shall be subject to Deductions in accordance with Section 22.

## **SEC. 13 OPERATIONS AND MAINTENANCE FACILITIES**

### **(a) Contractor Use.**

(1) The Contractor shall use the Facilities solely for the purposes of operating service and maintaining Vehicles and Equipment under this Agreement. The Contractor's right to use the Facilities may not be transferred or assigned.

(2) The Contractor shall be deemed to have a revocable license to use the Facilities during the term of this Agreement. This right shall not be construed as creating a lease (express or implied) or as giving rise to any of the legal rights or interests associated with a leasehold interest in property.

### **(b) Initial Inspection and Condition Upon Return; Turnover Audit.**

(1) Prior to the Commencement Date, the Contractor and the Regional Transit Authority will conduct a joint inspection of the Facilities in accordance with Section 6(f) hereof to establish the overall condition of the Facilities as of the time the Contractor assumes responsibility for Revenue Service under this Agreement (the Commencement Date).

(2) Upon termination of this Agreement (for whatever reason), the Contractor shall return the Facilities (and the Equipment therein) to the Regional Transit Authority in sound physical condition, and in a clean, orderly, and well maintained condition, subject to ordinary wear and tear. At the Regional Transit Authority's discretion, a Property Condition Assessment of the Facilities may be included in the turnover audit process conducted in accordance with Section 11 at the end of the Contract Term. Any expenses of repairing, maintaining, or cleaning the Facilities or the Equipment therein in order to assure that both meet the conditions in this paragraph shall be borne by the Contractor.

### **(c) Duty to Maintain.**

(1) The Contractor shall be responsible for all maintenance and repair of the Facilities (including all Equipment and materials therein). The Contractor shall maintain the Facilities in a clean and orderly condition at all times during the Contract Term, and shall conduct all maintenance, repair, and cleaning of the Facilities at its sole expense and in compliance with the terms of the Facility Maintenance Manual and its approved Facility Maintenance Plan. The Contractor shall return the Facilities to the Regional Transit Authority upon the termination of this Agreement, or on an earlier date if applicable, in a condition that meets the standards set forth in subsection (b)(2) hereof.

(2) The Contractor shall not make any structural modifications to the Facilities without the Regional Transit Authority's prior written Approval.

(3) The Contractor shall, at its sole expense, repair, maintain in good condition, and replace (as necessary) the Equipment used in the Facilities. The Contractor shall maintain all Equipment in accordance with the manufacturer's preventative maintenance program. All replacements made by Contractor shall be of like size, kind, and quality to the items replaced, as such items existed when originally installed, and shall be subject to the Regional Transit Authority's Approval. Replacement Equipment and materials shall be from the OEM or be better or equal in quality and service. The Regional Transit Authority reserves the right to reject the use of any after-market product that the Regional Transit Authority finds is not equal or better in quality or service to the OEM product.

(4) In the event that it is necessary to make a significant replacement of capital Equipment in the Facilities after the period of warranty coverage of that Equipment has expired, or necessary to make significant repairs to the Facilities, the Contractor may request that the Regional Transit Authority participate in the cost of that replacement or repair. The Regional Transit Authority may, in its discretion, participate in such cost if the Executive Director determines that: (A) the Contractor complied with the applicable manufacturer's preventative maintenance schedule; and (B) the need for such replacement or repair was not due to any act or omission of the Contractor. For purposes of this paragraph, a replacement or repair is "significant" is the total cost (Equipment, materials, and labor) exceeds \$25,000.

(d) Inspections and Repairs. – The Regional Transit Authority shall have the right but not the obligation, upon giving Contractor reasonable notice of the Regional Transit Authority's election to do so, to make repairs or perform maintenance or replacements on behalf of and for the account of Contractor. The Contractor shall, upon demand, pay to the Regional Transit Authority the cost and expenses incurred by the Regional Transit Authority's performance on behalf of Contractor.

(e) Environmental Requirements.

(1) During the Contract Term, the Contractor shall be responsible for the proper handling, use, storage, and disposal of all waste oil and Hazardous Materials produced or utilized at the Facilities, and shall comply with all applicable Federal, State, and local laws, regulations and requirements.

(2) The Regional Transit Authority shall provide the Contractor with an environmental audit of the Facilities as of the date the Contractor commences operations therefrom.

(3) The Contractor shall, at its sole expense, conduct an environmental audit of the Facilities, prepared by an independent certified environmental engineer, immediately prior to the end of the Contract Term. The Regional Transit Authority shall have the right to select the person or firm that will perform such audit. The Contractor warrants that it will return the Facilities to the Regional Transit Authority in compliance with all Federal, State, and local environmental laws, regulations, and requirements, and that it will take all remedial actions necessary to remove any Hazardous Materials from the Facilities that are present at the Facilities due to acts or omissions of the Contractor or that otherwise result from any occurrence during the Contract Term.

(4) The Contractor will not be responsible for pre-existing Hazardous Materials (those in existence on or before the Commencement Date) at the Facilities that are documented in the environmental audit provided by the Regional Transit Authority under paragraph (2) of this subsection provided that the Contractor shall be responsible for any negligent handling, use, or disposal of such pre-existing Hazardous Materials.

(5) In this Section, the term "Hazardous Materials" includes flammable, explosive, or radioactive materials, chemicals, hazardous wastes, toxic wastes or materials, any petroleum products or derivatives deemed hazardous by Federal, State, or local law, and any other material or substance defined as a "hazardous substance", "hazardous waste", or "hazardous material" under applicable Federal or State statute or regulations.

(f) Environmental Sustainability Management System (ESMS). -- The Contractor shall incorporate the Regional Transit Authority's Environmental Policy and Environmental Sustainability Management Plan (ESMP) in the provision of services as described in this Agreement. The Contractor shall ensure all activities under this Agreement comply with International Organization Standards (ISO) 14001. The Contractor shall participate and engage its staff in the development of an annual environmental aspects list as required under the ESMP.

(g) Warranties.

(1) The Contractor shall be responsible for the exercise and enforcement of all warranties related to the Facilities and the Equipment therein. The Contractor shall exercise due diligence in monitoring all warranties relating to the Facilities and Equipment, and shall conduct appropriate inspections prior to the end of all warranty periods.

(2) The Contractor shall promptly notify the Regional Transit Authority of any actions it takes to enforce such warranties and of any disputes regarding warranty

coverage. The Contractor may not waive any such warranties without the Regional Transit Authority's prior written Approval.

(h) Deductions. -- If the Contractor fails to satisfy its obligations regarding the maintenance of the Facilities, fails to implement and comply with its Facility Maintenance Plan, fails to comply with the Facility Maintenance Manual, or fails to properly exercise and enforce all warranties relating to the Facilities and the Equipment therein, the Contractor shall be subject to Deductions in accordance with Section 22.

## **SEC. 14 CLEVER DEVICE SYSTEM REQUIREMENTS**

(a) General. -- The Regional Transit Authority has provided the Contractor with the use of the Clever Device System which is designed to improve system communications; to promote and enhance overall system quality and efficiency through tracking schedule adherence and route adherence; to provide the technology and means for more accurate and reliable dispatching and control of on-street service; to provide a basis for and assist in the calculation of Revenue Service Miles and Revenue Service Hours operated; and to provide more accurate and timely information and data on system and Contractor performance.

(b) Contractor Duties.

(1) The Contractor shall fully utilize the Clever Device System in order to achieve the objectives described in subsection (a) hereof and to maximize the benefits available to the transit services through the use of the Clever Device System.

(2) The Contractor shall implement and comply with the Clever Device System Management and Operations Plan submitted with its proposal, and shall update that Plan (with the Regional Transit Authority's Approval) as necessary during the Contract Term.

(3) The Contractor shall utilize the Clever Device System and the information and data generated in the preparation of its monthly invoices and schedule adherence reports.

(c) Operator Use and Training.

(1) The Contractor shall provide the Regional Transit Authority, for its review and Approval, a Clever Device System Operator Training Program within sixty (60) calendar days after issuance of the NTP. This Clever Device System Training Program shall include information on the purpose, objectives, capabilities, and key features of the Clever Device System; procedures for logging into the system at the start of operations and for logging into the system at the start of operations and for logging off at specified times or events; procedures for using Clever Device System for communication with operations controllers; and

actions or steps to be taken in the event of system problems or malfunctions. The Regional Transit Authority shall provide updated information as it becomes available, and the Contractor shall be responsible for incorporating such updated information into the Training Program. Ongoing training must be Approved by the Regional Transit Authority.

(2) The Contractor shall assure that all operators are fully trained in the use of the onboard Clever Device System Equipment, in accordance with the Clever Device System Operator Training Program.

(3) The Contractor shall assure that all Vehicle operators and other employees log into the Clever Device System prior to operating a Clever Device System-equipped Vehicle, and use the Clever Device System throughout their daily use of such Vehicle. The Contractor shall consistently monitor these requirements and shall enforce and remedy any failure of an operator or other employee to comply with these requirements.

(4) If an operator or employee of the Contractor in any way vandalizes, intentionally breaks, or alters any component of the Clever Device System, or otherwise interferes with its use or functioning, the Contractor shall immediately remove the individual from employment in the Regional Transit Authority's transportation services. Actions that are a basis for dismissal under this paragraph include severing, cutting, piercing or otherwise breaking, disconnecting, or destroying the Clever Device System unit or associated cabling, wiring, or other components, or otherwise using the system for purposes other than intended by the Regional Transit Authority.

(d) Operations Controller Use and Training.

(1) The Contractor shall provide the Regional Transit Authority, for its review and Approval, a Clever Device System Operations Controller Training Program within sixty (60) calendar days after issuance of the NTP. This Training Program shall include information on the purpose, objectives, capabilities, and key features of the Clever Device System; methods and procedures for monitoring and appropriately responding to late Trips, early departures, bus bunching, Time-Point no-shows, late log-ins and early log-offs, and service accidents and incidents; procedures for logging in by the operations controller in the event of operator failure; and requirements for maintaining dispatch logs and incident logs.

(2) The Contractor shall assure that each individual involved in performing the duties of the Operations Controller and dispatching is fully trained in the use of the Clever Device System and Equipment, in accordance with the Clever Device System Operations Controller Training Program.

(3) The Contractor shall assure that the Clever Device System is monitored at all times while Revenue Vehicles are in service and that an adequate number of trained Operations Controllers are on duty and dedicated to the operations control function during all peak periods. The Operations Controller is to be dedicated to monitoring and improving service during the peak commuting periods, as established by the Regional Transit Authority, to responding to Regional Transit Authority requests for information on service quality, and to providing schedule and bus stop arrival updates to customer service representatives.

(4) The Contractor shall require its Operations Controllers to log in or connect operators to the full capability of the Clever Device System, its Equipment, materials, and components in the event an operator fails to take that action upon commencement of a Trip, route, or operation.

(5) If a Vehicle operator or other employee improperly disconnects or logs off the Clever Device System or if a farebox alarm is triggered, the Operations Controllers shall be responsible for notifying the supervisor, investigating the incident, and taking or recommending appropriate action.

(e) Maintenance Use and Training.

(1) The Contractor shall be responsible for the maintenance and repair of the Clever Device System, including all the Equipment, materials, and systems therein, in accordance with industry standards and with applicable builders' or manufacturers' manuals, standards, specifications, and instructions for proper maintenance and repair.

(2) The Contractor shall assure that each individual involved in the maintenance of the Clever Device System is fully trained in the appropriate maintenance procedures and requirements, in accordance with manufacturers' and industry standards.

(3) The Contractor shall establish and maintain a backup or alternative method of data collection that will be available in the event of a catastrophic or system wide Clever Device System failure.

(f) Data Collection. -- The Contractor shall be responsible for regularly collecting and reviewing all transaction logs, pull-out sheets, incident logs, and other information collected or reported on the Clever Device System, and for making all such information available to the Regional Transit Authority upon its request. The Regional Transit Authority shall provide the Contractor with templates and reporting software to prepare these reports.

## **SEC. 15 MATERIALS AND EQUIPMENT REQUIREMENTS**

(a) General. -- The Contractor shall be responsible for the proper maintenance and repair of all materials and Equipment used to provide services under this Agreement.

(b) Communications Equipment.

(1) (A) The Regional Transit Authority will provide a two-way mobile communications system in each Revenue Vehicle and Regional Transit Authority-provided Non-Revenue Vehicle (other than relief Vehicles) and will pay the airtime costs of such system. The Regional Transit Authority will also provide portable radios to assist in dispatching and other communications between Revenue Vehicles and Non-Revenue Vehicles, dispatching facilities, the Facilities, supervisory personnel, and the Regional Transit Authority in a communication network. The Regional Transit Authority shall be responsible for the air time costs of such portable radios.

(B) The Contractor shall be responsible for maintaining all communications and radio systems in good operating condition, in accordance with applicable maintenance standards and procedures, and for making any necessary repairs.

(2) The communications system shall enable operators to communicate directly with a dispatcher during Revenue Service hours. The Contractor's dispatcher must have direct access to a telephone at all times. Any re-installation of radios or installation of new radios in Regional Transit Authority-provided Vehicles will be according to the Vehicle manufacturer's recommendations and shall be subject to the Regional Transit Authority Approval.

(c) Fare Collection Equipment.

(1) The Regional Transit Authority will provide a complete farebox and related fare collection Equipment in every Revenue Vehicle. The Regional Transit Authority will also provide receivers, vaults, probing units, a garage computer, and other necessary Equipment for collecting fare revenues and ridership data from the fareboxes.

(2) The Contractor shall repair and maintain the fareboxes and all related fare collection Equipment to OEM Standards. Fareboxes shall at all times accept fare media supplied by the Regional Transit Authority. Fare media will be determined to be fully functional when accepted/processed at a 97 percent acceptance level by the test farebox maintained by the Regional Transit Authority. Any failure of a farebox to accept fully functional media will be considered to be a Contractor farebox malfunction.

(3) The Contractor shall be responsible for assuring that the fare collection Equipment is functional at all times (other than during maintenance). In the event fare collection Equipment is not functional and repairs cannot be completed within twenty-four (24) hours, the

Contractor shall submit a report to the Regional Transit Authority that tracks the maintenances efforts. This maintenance report shall include: (A) the reason(s) why the Equipment is not functional; (B) the reason(s) why repairs could not be completed; and (C) the anticipated date the Equipment will again be functional.

(4) The Contractor shall also be responsible for: (A) the proper operation, and maintenance of all diagnostic Equipment; (B) training employees on the use of such Equipment; (C) probing (downloading ridership data) and collecting fare revenue at the end of daily revenue operation on every Revenue Vehicle used; and (D) ensuring that the data received is accurate and timely.

(5) The Contractor shall secure keys to fare collection Equipment at all times through the use of an Electronic Key Management System provided and monitored by the Regional Transit Authority. The Contractor shall report lost or misplaced keys to the Regional Transit Authority immediately upon discovery. The Regional Transit Authority reserves the right to rekey, in its sole discretion and at the Contractor's expense, fare collection Equipment (fareboxes, receivers, vaults, cashboxes, etc.) whenever a key has been lost or misplaced.

(d) Surveillance System Equipment.

(1) The Regional Transit Authority provides a complete surveillance system and related surveillance equipment (collectively "Surveillance System") in every Revenue Vehicle. The Regional Transit Authority will also provide other necessary Equipment for monitoring and managing the Surveillance System.

(2) The Contractor shall repair and maintain the Surveillance System and all related surveillance Equipment to OEM Standards.

(3) The Contractor shall be responsible for assuring that the Surveillance System is functional at all times (other than during maintenance). In the event any element of the Surveillance System is not functional and repairs cannot be completed within twenty-four (24) hours, the Contractor shall submit a report to the Regional Transit Authority that tracks the maintenances efforts. This maintenance report shall include: (A) the reason(s) why the specific Surveillance System equipment is not functional; (B) the reason(s) why repairs could not be completed; and (C) the anticipated date such equipment will again be functional.

(4) The Contractor shall also be responsible for: (A) the proper operation and maintenance of all diagnostic Equipment; and (B) training employees on the use of such Equipment.

(e) Tires. -- The Contractor shall be responsible for providing (through purchase or lease) all tires and spares for all bus and van Revenue Vehicles and Non-Revenue Vehicles.



At the time tire replacement on bus and van Revenue Vehicles is required, the Contractor shall provide all new tires on all such Revenue Vehicles, as well as on the center and rear axles of the articulated Revenue Vehicles. The Contractor shall be responsible, at the termination of this Agreement, for returning the bus and van Revenue Vehicles with tires that meet the following standards:

- (1) Front axle -- Tires shall have a tread depth of 12/32" minimum.
- (2) Rear axle -- Tires should have a tread depth of 8/32" minimum.  
The tire height between 2 tires on the same hub should not vary more than 3/32".
- (3) Tires with cuts, grooves, or evidence of curb damage (past the manufacturer's rub bars) are not acceptable.

(f) Destination Signs. -- The Contractor shall perform required maintenance to ensure constant display on all Vehicle destination signs. The Contractor shall from time to time revise destination sign readings to reflect route changes or other relevant service information, as specified in writing or as provided electronically by the Regional Transit Authority.

(g) Spare Parts and Supplies.

(1) At its sole expense, the Contractor shall provide, and maintain stores of, spare parts, supplies, and lubricants necessary for the orderly and timely maintenance and operation of Revenue Vehicles and Non-Revenue Vehicles and for other Equipment and systems used to provide the service, at all times during the Contract Term, including the Option Years. The Contractor shall properly store and dispose of all materials, without limitation, required in the operation of the services under this Agreement.

(2) At the termination of this Agreement, for whatever reason, the Contractor shall offer to sell the spare parts and supplies to the New Contractor for their fair market value or for such other price as may be negotiated by the parties.

(h) Replacement Materials and Equipment. -- The Contractor shall use replacement materials and Equipment from the OEM or materials and Equipment that are better or equal in quality and service.

## **SEC. 16 INVENTORY REQUIREMENTS**

(a) Initial Inventory. -- The Regional Transit Authority shall provide the Contractor with an initial inventory of Equipment, tools, and other property to be used to provide services under this Agreement. A list of this initial Equipment inventory is set forth in Attachment B-4.

The initial inventory may be added to by the Contractor, and the inventory list updated accordingly, during the Contract Term.

(b) Obligations of Contractor. -- By execution of this Agreement, the Contractor acknowledges receipt of initial inventory. The Contractor shall be responsible for returning to the Regional Transit Authority, at the termination of this Agreement, property and Equipment of equivalent type, value (as of the date acquired), and condition as that identified in the updated inventory list, subject to normal wear and tear.

(c) Final Inventory. -- The Regional Transit Authority shall conduct a final inventory during the last month of the Contract Term. If any property or Equipment is determined, on the basis of a comparison of the updated inventory list to the final inventory list, to be missing, damaged, otherwise unavailable for use, or in a condition that is in excess of ordinary wear and tear, the Contractor shall be responsible for either replacing such property or Equipment or compensating the Regional Transit Authority for its replacement value. The Regional Transit Authority may deduct any amount due for the replacement of property or Equipment from payments due to the Contractor. If the amount due for replacement exceeds the amount of the payments due, the Contractor shall pay the Regional Transit Authority that excess amount within thirty (30) Days after notification from the Regional Transit Authority.

## **SEC. 17      COMPUTER AND TECHNOLOGY REQUIREMENTS**

(a) Regional Transit Authority-Supplied Computer Equipment. -- The Regional Transit Authority will supply computers to run Regional Transit Authority mandated software applications in support of services provided under this Agreement. The Contractor shall be responsible for the proper care and handling of all Regional Transit Authority provided computer and network Equipment. The Contractor may not load any additional software on Regional Transit Authority-owned computers. The Contractor may not move or relocate any Regional Transit Authority-owned computers without the express prior written Approval of the Regional Transit Authority's IT Department.

(b) Regional Transit Authority Network. -- The Regional Transit Authority will provide a network that will be maintained by the Regional Transit Authority. With the Regional Transit Authority's Approval, the Contractor may establish a separate network at the Contractor's expense provided that all records relating to operations and maintenance of the Regional Transit Authority's transit and ADA Paratransit services shall be accessed by the Regional Transit Authority as public records and subject to the Louisiana Public Records Act (LA.R.S.44.1 et seq.).

(c) Software. -- Regional Transit Authority-owned computers at the Facilities will be equipped with the necessary software applications. The Contractor shall use these applications for the Clever Device System, Schedule Adherence Reporting, Customer Comment Reporting, Vehicle Maintenance Management, Vehicle Fuel Management, Facilities Management, and any other software deemed necessary by the Regional Transit Authority. No additional software may be loaded on Regional Transit Authority-owned computers by the Contractor without prior Approval of the Regional Transit Authority. The Contractor is responsible at its sole expense for ensuring all Vehicle diagnostic software is up to date, complete, and properly licensed.

(d) Facsimile. -- The Contractor shall also provide and maintain on-site operating facsimile machines, located in maintenance, dispatch, and administration.

(e) Telephone System. -- The Contractor shall be responsible for all costs of operating and maintaining the telephone system supplied by the Regional Transit Authority and shall utilize that system to meet all of its obligations under this Agreement, including but not limited to customer service responsibilities.

## **SEC. 18 FARE COLLECTION**

(a) General. -- The fare structure shall be established by the Regional Transit Authority, and may be modified by the Regional Transit Authority during the Contract Term. Currently accepted fare media (in addition to cash fares). Accepted media may include additional fare products in the future.

(b) Contractor Responsibility.

(1) The Contractor shall conduct training for all drivers/operators so they are aware of and adhere to the fare structure to ensure the proper collection and recording of fares of accepted fare media.

(2) The Regional Transit Authority may require that all fare media coupons, tickets, and transfer slips collected by the operators be turned in daily to the General Manager. The Contractor shall require all drivers, when operating Revenue Vehicles with smart fare collection systems, to log on to the farebox using the Control Unit (Operator Control Unit/Driver Control Unit) before starting any Revenue Service and log off at the end of Revenue Service. Information shall be reported as required under this Agreement.

(c) Farebox Data. -- The Contractor shall probe and vault daily each and every Revenue Vehicle upon its return from Revenue Service and/or before any maintenance is performed on a Vehicle. The Contractor shall assure that all revenues collected are properly

secured (placed in collection vaults) and that ridership data/information is properly downloaded from each bus to the fare collection system garage computer providing accurate and timely ridership data/information.

(d) Farebox Receipts. -- The Contractor shall assure that total farebox revenues (cash receipts) are transferred to a Regional Transit Authority money room for accounting by staff or a vendor designated by the Regional Transit Authority. Such revenues shall be reported to the Regional Transit Authority. Fare collection training shall be conducted by the Contractor, and proper fare collection shall be enforced by all project personnel.

(e) Records and accounts. -- The total amount of farebox revenue delivered must equal, at a minimum, the farebox revenues actually deposited. The Contractor shall be held accountable for any variance or discrepancies between the farebox revenues reported. Delivery of greater than amounts reported on the reports will be deemed correct, however deliveries of less than amounts reported on the reports will be considered a shortage for which the Contractor shall be held accountable. All delivery shortages greater than 0.5 percent (five tenths of one percent) will be deducted from the Contractor's monthly invoice in accordance with Section 8 hereof.

(f) Security of Fare Collection System.

(1) The Contractor shall provide a written set of fare collection system security policies, procedures, and practices to the Regional Transit Authority, for its review and Approval, within sixty (60) calendar days after issuance of the NTP, for the Regional Transit Authority's review and Approval. Such fare collection security policies, procedures, and practices shall conform to accepted public transit industry standards and best practices as articulated by the American Public Transportation Association (APTA).

(2) The Regional Transit Authority reserves the right, following consultation with the Contractor, to establish, update, modify, and/or adjust security policies, procedures, and practices for the handling, storage, control, and counting of farebox receipts or to conduct actual cash counts to verify systems accuracy and/or system security. This may include but is not limited to counting daily farebox receipts prior to delivery of these receipts to the bonded collection/deposit provider for verification against amounts actually deposited.

(3) If the fare collection security system is breached internally, by an employee or subcontractor of the Contractor, or by any other person for whom the Contractor is legally or contractually responsible, the Contractor shall (A) reimburse the Regional Transit Authority for the full amount of fare receipts lost, as verified by fare collection system reports, plus the costs associated with any resulting investigation; (B) fully cooperate in any investigation

process involving the loss, including, but not limited to, providing all pertinent documentation and information to the Regional Transit Authority; (C) cooperate with local law enforcement efforts to arrest and prosecute any employee or subcontractor of the Contractor, or any other person for whom the Contractor is legally or contractually responsible, who intentionally breaches the fare collection security system; and (D) reimburse the Regional Transit Authority for any damage or repairs necessary to make the fare collection security system whole.

## **SEC. 19 SAFETY AND SECURITY**

(a) Contractor Responsibility. -- The Contractor shall be responsible for the safety and security of the passengers and the Facilities and Equipment provided by the Regional Transit Authority for the Contractor's use. The Contractor shall work cooperatively with Regional Transit Authority staff, other contractors, and local, State and Federal representatives in developing, implementing and security procedures described in this Section.

(b) Systems Security and Emergency Preparedness Plan.

(1) Within twenty (20) calendar days after issuance of the NTP, the Contractor shall develop and submit to Regional Transit Authority a Systems Security and Emergency Preparedness Plan (SSEPP), Guidelines for Transit Threat Management, a Continuity of Operations Plan, a plan to implement the Regional Transit Authority's Hurricane Preparedness Plan, an Emergency Response and Operations Plan and a plan to comply with the Regional Transit Authority' System Safety Program Plan/Agency Safety Plan set forth in Attachment H of this Agreement. The Contractor shall train its employees on all such plans, and shall update such plans as necessary and appropriate over the Contract Term. The Contractor shall comply with all such plans and with all State, local, and Federal requirements for transit system safety and security.

(2) The Contractor's Safety and Training Managers shall develop and coordinate annual training plans with Regional Transit Authority's staff assigned to safety responsibilities, and shall coordinate with Regional Transit Authority to participate as members of the Regional Transit Authority Transit/Contractor Safety and Security Advisory Working Group.

(3) The Contractor shall assure that all operators are trained for safety and security under the NTI Safety, Security, and Crises Management Booklet.

(c) Personnel.

(1) The Contractor, as part of its Staffing Plan, shall provide at least one staff person dedicated to safety, system security and emergency preparedness. Such person shall

have sufficient training and expertise to carry out and manage the Contractor's safety and security obligations under this Agreement.

(2) The Contractor's dedicated staff person shall attend, on behalf of the Contractor, monthly safety group meetings and special meetings with the Regional Transit Authority.

(3) The Contractor shall be required to participate in activities and exercises in support of the Regional Transit Authority's efforts to meet and prepare for Federal, State, or local emergencies. The Contractor's dedicated staff person shall coordinate these events with the designated Regional Transit Authority staff and additional Contractor staff, and shall arrange for the use of appropriate Regional Transit Authority assets if needed.

(d) Training Program. -- The Contractor's Training Program shall provide for safety and security training of all managers, supervisors, and front line employees in accordance with Federal, state and local requirements and recommendations, and shall include:

(1) training in emergency management, incident response, counter-terrorism, improvised explosive devices (IEDs) and weapons of mass destruction (WMD);

(2) personal security training (e.g., Drug Free Work Place Initiatives, Amber Alert and Community Safe House Programs, Employee Assistance Programs, and Workplace Violence Prevention and Awareness Programs);

(3) safety/OSHA related training (e.g., first aid, personal protective Equipment, etc.); and

(4) refresher and/or re-training on an annual basis.

The Contractor shall maintain documentation of training (e.g. sign in sheets, certificates, signed acknowledgements of training), and shall maintain such documentation in a separate training file and provide it to Regional Transit Authority upon request.

(e) Emergencies.

(1) The Regional Transit Authority serves as a critical component of the New Orleans City Assisted Evaluation Plan and will provide appropriate resources to fully participate in its obligations under the plan. Upon verbal or written authorization from the Regional Transit Authority, the Contractor shall respond to emergency situations within its service area with Contractor personnel and Regional Transit Authority-owned Vehicles. In the event of a major emergency or natural disaster, such as a fire, flood, or man-made catastrophe, the Contractor shall make labor, management, transportation, and communications resources available to the extent feasible for emergency assistance.

(2) The Contractor shall be responsible for the safety of its personnel and for any worker's compensation claims that might result from performance of emergency service.

(3) The Contractor shall not be responsible for damage to Regional Transit Authority-owned Vehicles that results directly from any incident outside of the control of the Contractor while it is performing emergency services as authorized or directed by the Regional Transit Authority.

(f) Access to the Facilities.

(1) The Regional Transit Authority shall provide Facility keys and an access control system that will be used to develop badges and program building access devices, to the Contractor, and shall determine the appropriate access control system for the Facilities and the Regional Transit Authority's other property.

(2) The Contractor shall be responsible for the secure distribution and tracking of all Facility and Vehicle access devices provided by the Regional Transit Authority, and for issuing badges to Contractor employees, subcontractors, and vendors (as directed by the Regional Transit Authority). The Contractor shall be responsible for key and badge control, and shall maintain a key issuance log and badge issuance log and any associated documentation, which shall be provided to the Regional Transit Authority upon request. The Contractor shall be responsible for providing written notice to its employees, contractors, visitors, and vendors regarding the policies, procedures, and responsibilities associated with being issued a Regional Transit Authority key and/or Regional Transit Authority badge. The Contractor shall maintain this information with the key and badge log and shall make such information available to the Regional Transit Authority upon request.

(3) The Contractor shall be solely liable and responsible for any expenses which result, as determined by the Regional Transit Authority in its discretion, from inadequate key or badge control and require the Regional Transit Authority to re-key or replace access control items. The Contractor shall also be responsible for replacing any damaged Equipment, and for notifying the Regional Transit Authority immediately to report damaged Equipment.

(g) Audits.

(1) In April of each year of the Contract Term, the Contractor shall conduct a self-audit on safety, security, and emergency preparedness on an annual basis. These audits/monitoring will be based upon Federal, State, and local programs and guidelines, audit results, and the APTA Bus Safety Management Program checklists. The Contractor shall also participate in periodic Regional Transit Authority audits and monitoring and shall also assist the Regional Transit Authority during any Federal, state, or local safety or security audits.

(2) The Regional Transit Authority may conduct site visits of the Facilities at any time during the Contract Term for purposes of audits and monitoring. The Contractor shall make available any and all records, files, logs and associated documentation to the Regional Transit Authority's designated representatives as requested.

(h) Reporting. -- The Contractor shall be responsible for providing the following reports to the Regional Transit Authority relating to system safety and security:

(1) Monthly. -- (A) Security and Emergency Incident Report/Trend Analysis; (B) NTD Safety and Security Report; (C) safety meeting agenda, including corrective actions taken as a result of items identified through the safety committee; (D) Vandalism/Incident Tracking Report; (E) training sessions completed related to transit security; and (F) OSHA Hazard Analysis. In addition, the Contractor shall make the minutes of safety meetings available to Regional Transit Authority at the Facility.

(2) Annually. -- (A) Year End Trend Analysis; and (B) other reports as required by Regional Transit Authority or by Federal, state, or local agencies.

## **SEC. 20      MARKETING AND ADVERTISING**

(a) Regional Transit Authority Rights and Responsibilities. -- The Regional Transit Authority shall provide public relations, media relations and Approval for marketing materials and advertising services. Proceeds of any advertisement shall be remitted to the Regional Transit Authority.

(b) Contractor Responsibility. -- The Contractor shall cooperate in the marketing and advertising related to Regional Transit Authority services (such as through the installation and removal of all interior and exterior signage and decals, including advertising signs, rider alerts, newsletters, and bus scheduling information) at no additional expense to the Regional Transit Authority. The Contractor may not use the Regional Transit Authority name or logo without the Regional Transit Authority's prior written consent.

(c) Riders' Guides. -- The Contractor shall be responsible for ensuring proper care, protection, handling, and maintenance of the Regional Transit Authority Riders' Guides, and other printed schedule materials, and for ensuring that there is an adequate supply of Riders' Guides onboard each Revenue Vehicle for the period of time designated by the Regional Transit Authority. Riders' Guides or other printed schedule materials shall be used solely for the intended purpose of providing information to passengers, and shall not be used for other purposes (such as cleaning, seat cushions, etc.).



(d) Communications with the Media. -- All communications with the media shall be the sole responsibility of the Regional Transit Authority. The Contractor and its employees shall not engage the media as a spokesperson for the Regional Transit Authority. In addition, the Contractor and its employees shall not speak on behalf of the Regional Transit Authority in any online forum or social media site, at official public meeting, or to members of the press. The Contractor will limit its public engagement with customers to answering customer questions on-board Regional Transit Authority Revenue Vehicles, at bus stops, or as part of its official customer comment system.

(e) Endorsement Policy. -- The Contractor and its subcontractors may not use the Regional Transit Authority's name, logo, or images in vendor promotional materials, written or oral endorsements, customer profiles, online information, or sales collateral unless specifically authorized in writing by the Executive Director. This provision does not prohibit the Contractor from using the Regional Transit Authority as a reference in responding to a request for proposals or other procurement solicitation, provided that the Contractor shall coordinate all requests for references with the Executive Director.

## **SEC. 21 SERVICE CHANGES**

(a) General. -- Changes to the services provided under this Agreement or the Scope of Work may only be made by written change notification from the Regional Transit Authority to the Contractor in accordance with this Section, except in cases of a declared emergency by the Executive Director. The Contractor shall be liable for all costs resulting from any Service Change undertaken that was not properly ordered or approved in writing and signed by the Executive Director. Oral Service Change orders are not permitted.

(b) Allowable Service Changes. -- Allowable Service Changes may include, but are not limited to: adding or deleting segments of routing; extending, deleting, or adding routes or parts of routes; reallocating, decreasing, or increasing Revenue Services, Revenue Service Hours, Revenue Service Miles, or the frequency of service; adding commuter express service or routes, or other types of new services needed to meet changing transit demand and market conditions; or modifying requirements or scope relating to the maintenance of Vehicles or the Facilities. The addition of Revenue Vehicles or changes in the Revenue Vehicle fleet mix does not constitute a Service Change for purposes of this Section.

(c) Process for Change Orders.

(1) Any Service Change proposed by the Regional Transit Authority shall be transmitted to the Contractor in writing, identifying the change and specifying the effective date.

Within fifteen (15) Days after receipt of a written Service Change notice from the Regional Transit Authority, the Contractor shall provide the Regional Transit Authority a written response identifying the impact of such change on operations, estimating any resulting cost increase or savings, and identifying any feasibility problems the Contractor believes would be created by the proposed Service Change.

(2) Upon agreement of the Parties on a proposed Service Change, the Regional Transit Authority will issue a bilateral Change Order, which will be executed by both Parties. The Contractor shall then proceed to implement the Service Change within fifteen (15) calendar days after execution of the Change Order or within such other period of time as the Regional Transit Authority may specify in the Change Order. If the Parties are unable to agree on a proposed Service Change within ten (10) Days after the Contractor's written response under paragraph (1), the Regional Transit Authority may issue a unilateral Change Order, and any dispute regarding such Change Order shall be resolved in accordance with the disputes clause in Section 30 of this Agreement. Notwithstanding the pendency of any such dispute, the Contractor shall proceed, within twenty (20) Days after issuance of such unilateral Change Order, to implement the Service Change as ordered by the Regional Transit Authority.

(d) Changes in Revenue Service Hours. -- The Contractor agrees that Regional Transit Authority may, through the Service Change process, increase or decrease the total number of Revenue Service Hours by mode by (15) percent or less during any Contract Year (as compared to the prior year's Revenue Service Hours) without renegotiation of the Annual Service Payment or the Revenue Service Hour Rate(s) for the affected transportation mode(s) set forth in Attachment F-2. A proposed increase or decrease in the total number of Revenue Service Hours in excess of fifteen (15) percent in any Contract Year shall give rise to negotiations between Regional Transit Authority and the Contractor, which may result in the Annual Service Payment and/or the Revenue Service Hour Rates increasing, decreasing, or remaining the same.

(e) Changes in Law or Regulations.-- In the event of an unanticipated and exceptional change in applicable Federal, State, or Local laws or regulations after the date of execution of this Agreement that results in additional costs of providing operations and maintenance services hereunder, the Contractor may request an adjustment in its Annual Service Payment or Revenue Service Hour Rate of the transportation modes impacted by submitting a written request to the Regional Transit Authority, supported by appropriate documentary justification. The Regional Transit

Authority agrees to review, discuss, and consider in good faith any request of the Contractor under this paragraph, but the decision as to whether or not to agree to such request shall be in the sole discretion of the Regional Transit Authority.

(f) Contractor Suggestions. -- The Contractor may suggest alternatives to any Service Changes proposed by Regional Transit Authority, and may also propose Service Changes or operating efficiencies it believes are appropriate for more efficient or improved services under this Agreement.

## **SEC. 22 KEY PERFORMANCE MEASURE ACHIEVEMENT**

### **(a) Assessment of Deduction and Awarding of Incentives.**

(1) In order to promote compliance with schedule and other performance requirements, the Regional Transit Authority shall have the right, in its discretion, to assess and collect Deductions in accordance with the following provisions of this Section. In addition, to acknowledge outstanding performance, the Regional Transit Authority shall award Incentives in accordance with the following provisions of this Section provided that the amount of awarded Incentives for any given month shall not exceed the Deductions assessed for that month.

(2) The Regional Transit Authority intends to assess Deductions and award Incentives primarily on a monthly basis in accordance with the Key Performance Measures set forth in subsection (b) of this Section. Assessment and award will be based on information obtained through the Reports provided pursuant to Section 23 of this Agreement, the Clever Device System, Vehicle and Facility inspections, ride checks, visual observations, and such other means as Regional Transit Authority deems appropriate.

(3) The Contractor understands and agrees that if it fails to achieve the Key Performance Measures set forth in subsection (b) of this Section, the Regional Transit Authority will suffer damages which cannot be quantified as of the date of execution of this Contract. The Contractor hereby agrees to pay (or to have deducted from its invoices) the Deductions amounts stated in this Section. The Contractor further agrees that amounts payable under this Section are in the nature of liquidated damages and are not a penalty, and that such amounts are reasonable in light of the actual or anticipated harm incurred and the difficulties of proof of actual loss.

(4) The Contractor shall have the opportunity to contest any Deductions assessed on the grounds set forth in subsection (c) of this Section, but this opportunity shall not affect the right of the Regional Transit Authority to deduct the amounts from the monthly or annual amount, as appropriate, due the Contractor, pending resolution of the dispute.

(5) For purposes of initial implementation of services under the Agreement, the Regional Transit Authority will review the Contractor's performance during each of the first six (6) months of operations and indicate the amount of the Deductions (if any) attributable to the Contractor's performance for each of those months. However, the Regional Transit Authority will forego assessing Deductions for the Contractor's performance during those months in accordance with the following schedule:

- (i) for the first and second months of operations, the Regional Transit Authority will not impose assessed Deductions;
- (ii) for the third and fourth months of operations, the Regional Transit Authority will impose 33 percent of applicable Deductions;
- (iii) for the fifth and sixth months of operations, the Regional Transit Authority will impose 66 percent of applicable Deductions; and
- (iv) for the remaining term of the Agreement, the Regional Transit Authority may impose 100 Percent of all applicable Deductions.

Notwithstanding the reduced level of Deductions that may be imposed during the first six (6) months of service operations, the full value of the Deductions that could have been assessed by the Regional Transit Authority, absent this subsection, may be taken into account by the Regional Transit Authority for purposes of remedial actions (e.g., issuance of a cure notice pursuant to Section 40, Termination for Default). Notwithstanding the Regional Transit Authority's forbearance of a level of Deductions during the first six (6) months of operations, Incentives shall be awarded to the extent earned during all months of operations.

(b) Categories of Deductions and Incentives. – The Regional Transit Authority may assess Deductions and award Incentives on the following basis:

(1) On-time Performance -- The following Deductions and Incentives shall be assessed and/or awarded if:

The On-time performance of each route or mode of transit service does not meet, or surpasses the thresholds.

(i) ADA Paratransit - the Deductions and Incentives shall follow the thresholds and amounts below for Monthly Service Payments made for Contract Months during the first Contract Year.

Threshold	Deduction
85% or fewer trips are On-time.	\$10,000, per Contract Month.
Threshold	Incentive
90% or more trips are On-time.	\$10,000, per Contract Month.

(ii) ADA Paratransit - the Deductions and Incentives shall follow the thresholds and amounts below for Monthly Service Payments made for Contract Months subsequent to the first Contract Year.

Threshold	Deduction
87% or fewer trips are On-time.	\$10,000, per Contract Month.
Threshold	Incentive
92% or more trips are On-time.	\$10,000, per Contract Month.

(iii) Ferry - the Deductions and Incentives shall follow the thresholds and amounts below for Monthly Service Payments made during the Contract Term.

Threshold	Deduction
86% - 90% of trips are On-time.	\$1,000, per route, per Contract Month.
81% - 85% of trips are On-time.	\$2,000, per route, per Contract Month.
80% or fewer trips are On-time.	\$5,000, per route, per Contract Month.
Threshold	Incentive
95% or more trips are On-time.	\$10,000, per Contract Month.

(iv) Bus and Streetcar - the Deductions and Incentives shall follow the thresholds and amounts below for Monthly Service Payments made for Contract Months during the first Contract Year.

Threshold	Deduction
71% - 75% of trips are On-time.	\$1,000, per route, per Contract Month.
66% - 70% of trips are On-time.	\$2,000, per route, per Contract Month.
65% or fewer trips are On-time.	\$5,000, per route, per Contract Month.
Threshold	Incentive
85% or more trips are On-time.	\$10,000, per Contract Month.

(v) Bus and Streetcar – the Deductions and Incentives shall follow the thresholds and amounts below, or Monthly Service Payments made subsequent to the first Contract Year.

Threshold	Deduction
76% - 80% of trips are On-time.	\$1,000, per route, per Contract Month.
71% - 75% of trips are On-time.	\$2,000, per route, per Contract Month.
70% or fewer trips are On-time.	\$5,000, per route, per Contract Month.

Threshold	Incentive
90% or more trips are On-time.	\$10,000, per Contract Month.

(2) Missed Trip -- The following Deductions shall be assessed in each Contract Month if:

More than 3.0% of Trips in a route in a Contract Month are measured as Missed Trips. The Deductions shall follow the thresholds and amounts below. These Deductions shall be applied per mode of transit, except for ADA Paratransit service.

Threshold	Deduction
96.0% - 96.9% of all trips are not Missed Trips.	\$1,000, per route per Contract Month.
95.0% - 95.9% of all trips are not Missed Trips.	\$2,000, per route per Contract Month.
Lower than 95.0% of all trips are not Missed Trips.	\$5,000, per route per Contract Month.

(3) Missed Trip for ADA Paratransit -- The following Deductions shall be assessed if the number of Missed Trips as defined in Section 1 of this Agreement for ADA Paratransit Trips exceeds more than 0.5 percent of the ADA Paratransit Trips scheduled for that month.

The Deduction shall be \$2000 per every ten of a percent (or part thereof) that Missed Trips exceed 0.5 percent of ADA Paratransit Trips scheduled.

(4) Last Trip of the Day -- For transit modes other than ADA Paratransit, the following Deductions shall be assessed if the following incident occurs during the Agreement Term:

Any Missed Trip is the last Trip of the day on that route. The Deduction shall be \$2,000 per occurrence.

(5) Distance between Service Interruptions -- The following Deductions and Incentives shall be assessed for:

The Revenue Service Miles between a Vehicle encountering a Service Interruption. The Deduction shall follow the thresholds and amounts below. The Deduction shall be applied per mode of transit.

Threshold	Deduction
Bus - average of 12,000 or fewer Revenue	\$5,000, per Contract Month.

Service Miles between 1.0 Service Interruptions.	
Streetcar - average of 20,000 or fewer Revenue Service Miles between 1.0 Service Interruptions.	\$5,000, per Contract Month.
ADA Paratransit - average of 40,000 or fewer Revenue Service Miles between 1.0 Service Interruptions.	\$5,000, per Contract Month.
Ferry - any Service Interruptions.	\$5,000, per occurrence.

The Incentive shall follow the thresholds and amounts below. The Incentive shall be applied per mode of transit.

Threshold	Incentive
Bus - average of 16,000 or more Revenue Service Miles between 1.0 Service Interruptions.	\$5,000, per Contract Month.
Streetcar - average of 40,000 or more Revenue Service Miles between 1.0 Service Interruptions.	\$5,000, per Contract Month.
ADA Paratransit - average of 50,000 or more Revenue Service Miles between 1.0 Service Interruptions.	\$5,000, per Contract Month.

- (6) Preventable Accidents -- The following Deductions shall be assessed for:  
The number of Preventable Accidents per 100,000 Revenue Service Miles.

The Deduction shall follow the thresholds and amounts below. The Deduction shall be applied per mode of transit.

Threshold	Deduction
Bus and ADA Paratransit - more than 1.0 Preventable Accidents per 100,000 Revenue Service Miles.	\$10,000, per Contract Month.
Streetcar - more than 4.0 Preventable Accidents per 100,000 Revenue Service Miles.	\$10,000, per Contract Month.
Ferry - any Preventable Accidents.	\$10,000, per occurrence.

- (7) ADA Requirements -- The following Deductions shall be assessed if the following incident occurs:

Contractor is found to be non-compliant with ADA requirements or the Regional Transit Authority's ADA policies. These include putting a Vehicle into service with an inoperable ramp, or relevant securement devices, or where staff fails to accommodate a passenger request to board using accessibility features. The Deduction shall be \$500 per occurrence.

(8) ADA Paratransit Reservation Line -- The following Deductions shall be assessed in each Contract Month for:

The prompt and effective management of the Paratransit Reservation Line, during the Paratransit Reservation Line Hours of Operation. The Deduction shall follow the thresholds and amounts below applicable in each Contract Month.

Threshold	Deduction
Paratransit Reservation Line - more than 10% of calls answered in more than 2 minutes.	\$1,000
Paratransit Reservation Line - more than 10% of calls are dropped.	\$1,000

(9) Volume of Customer Complaints -- The following Deductions and Incentives shall be assessed for:

The number of customer complaints received in which the Contractor or its Staff is alleged to have failed to perform the required service appropriately. The Authority will not consider arguments pertaining to complaint validity, as embedded within this standard is an allowance for potentially invalid complaints.

The Deductions shall follow the thresholds and amounts below, applicable in each Contract Month. The Deductions shall be applied per mode of transit.

Threshold	Deduction
Bus – more than 15.0 complaints per 100,000 Boardings.	\$1,000
Streetcar – more than 3.0 complaints per 100,000 Boardings.	\$1,000
Ferry – more than 1.0 complaints per 100,000 Boardings.	\$1,000
ADA Paratransit - more than 25.0 complaints per 100,000 Boardings.	\$1,000

The Incentives shall follow the threshold and amount below, applicable in each Contract Year.

Threshold	Incentive
Complaints decrease at least 20.0% year-over-year, and decrease quarter-over-quarter.	\$2,500

(10) Processing of Customer Complaints -- The following Deductions shall be assessed if the following incident occurs:



Contractor fails to comply with the Complaint Processing Procedure. The Deduction shall be \$100 per occurrence, and may be applied for each Day thereafter the relevant information is not provided to the Regional Transit Authority.

(11) Contractor Staff Conduct -- The following Deductions shall be assessed if the following incident occurs:

Contractor Staff fails to comply with the Regional Transit Authority's standards set forth in the Regional Transit Authority Uniform Policy and Customer Service Guidelines regarding appearance, conduct, and communicating to customers or the public. The Deduction shall be \$250 per occurrence, and may be applied maximum once per day per Staff.

(12) Vehicle & Facility Cleanliness -- The following Deductions shall be assessed if the following incident occurs:

Any Vehicle or Facility which is the responsibility of the Operator fails to comply with the Regional Transit Authority's standards regarding appearance and sanitation Regional Transit Authority Vehicle Condition Policy. The Regional Transit Authority reserves the right to direct the Contractor to replace Vehicles which are in-service which are observed to be excessively non-compliant to the appearance and cleanliness standards. The Deduction shall be \$250 per Vehicle or Facility, and may be applied maximum once per day.

(13) Vehicle Inspection -- The following Deductions shall be assessed if the following incident occurs:

Any non-compliance with respect to a regulatory safety inspection conducted by the Regional Transit Authority and/or law enforcement agencies. The Deduction shall follow the thresholds and amounts below.

Threshold	Deduction
Non-compliance resulting in anything other than the in-service Vehicle being removed	\$500
Non-compliance resulting in the Vehicle being removed due to unsatisfactory safety rating.	\$1,000, and may be applied for each day thereafter the Vehicle remains out of service.

(14) Vehicle Fit-for-Use -- The following Deductions shall be assessed if the following incident occurs:

An in-service Vehicle is found to be not Fit-for-Use. The Deduction shall be \$250 per occurrence, in addition to the trip on which the Vehicle is in the midst of to be a Missed Trip. The Deduction may be applied for each day thereafter the Vehicle remains not Fit-for-Use.

(15) Fare Revenue Collection -- The following Deductions shall be assessed in each Contract Month, if the following incident occurs:

The proportion of fare collection which is the responsibility of the Operator in actual terms, is below 99%. The Deduction shall follow the thresholds and amounts below, measured as (actual fare revenue collected / Ridership Revenue) in each Contract Month.

Threshold	Deduction
98.1% - 99.0%	\$5,000
97.1% - 98.0%	\$10,000
97.0% or below	\$15,000

(16) Reporting -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

Contractor fails to submit a Scheduled Report, with complete and accurate information as well as on an on-time basis. The Deduction shall be \$500 per occurrence, and may be applied once per week following the initial Deduction until the Scheduled Report is submitted with complete and accurate information.

(17) Compliance –Regional Transit Authority Inspection -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

An inspection by the Regional Transit Authority finds the Contractor to be in violation of applicable law requirements or the Regional Transit Authority's policies and procedures. The Deduction shall be \$1,000 per occurrence.

(18) Compliance - Regulator Inspection -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor fails to provide timely, accurate and/or complete data to the Regional Transit Authority for which it was the Contractor's responsibility, resulting in a funding source entity, permitting entity, or other regulatory body penalizing the Regional Transit Authority. The Deduction shall be the value of the penalty levied by the regulatory body and suffered by the Regional Transit Authority.

(19) Traffic Violations -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor commits a traffic or parking violation. The Deduction shall be \$1000 per occurrence, and in addition the Contractor shall be responsible for any resulting fine.

(20) Contractor Personnel Pre-Approval -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor makes changes to its Key Personnel, as identified in this Agreement, without the prior review and written approval of the Regional Transit Authority. The Deduction shall be \$50,000 per occurrence.

(21) Availability of General Manager -- The following Deductions shall be assessed if the following incident occurs during the Agreement Term:

The Contractor's General Manager, or an approved designate, is not Available 24/7/365 for any purposes related to the services rendered to the Regional Transit Authority under this Agreement. The Deduction shall be \$500 per occurrence, and may be applied maximum once per day.

(22) Contractor Staff Qualifications -- The following Deduction shall be assessed if the following incident occurs during the Agreement Term:

Proof of licenses, qualifications and registrations of each Contractor Staff member is not made available or provided to the Regional Transit Authority within two (2) Days of the Contractor receipt of the Regional Transit Authority's request. The Deduction shall be \$500 per occurrence, and may be applied once per week following the initial Deduction until the proof is made available or provided.

(c) Contractor Response and Defenses

(1) If the Contractor believes it has a defense to any Deductions assessed by the Regional Transit Authority, it shall provide a written response to the Regional Transit Authority within five (5) Days of receiving a notice of Deduction, setting forth the evidence or documentation in support of its defense to the assessment.

(2) The Regional Transit Authority may, in its discretion, provide the Contractor with relief (in whole or in part) from any Deduction that could have been assessed under this Section if the Contractor provides sufficient evidence or documentation to the Regional Transit Authority that the events giving rise to the Deduction in question were beyond the Contractor's control and could not reasonably been mitigated, due to circumstance such as,

but not limited to, adverse and usual weather or traffic conditions, natural disasters, or other Force Majeure events as described in Section 42 of this Agreement.

(3) Delays which could have been reasonable anticipated due to usual conditions in any given area or any given roadway shall not be a defense to Deductions.

## **SEC. 23 PROJECT OPERATION RECORDS AND REPORTS**

### **(a) Overall Responsibilities of Contractor.**

(1) In order to document services under this Agreement, the Contractor shall maintain all project records as requested by the Regional Transit Authority and as required for good business practices. The project operation records are intended to provide documentation of daily operations and to serve as a database to monitor and evaluate productivity of the services provided and the service requirements and methods.

(2) The Contractor shall submit all project operation records to the Regional Transit Authority according to the reporting schedule established in this Section. The Contractor shall permit authorized representatives of the Regional Transit Authority to examine all data and records related to services upon request by the Regional Transit Authority or according to scheduled reporting periods. All service records prepared by the Contractor (and underlying data) shall be owned by the Regional Transit Authority and shall be made available to the Regional Transit Authority at its request and at no additional charge.

(3) The Regional Transit Authority reserves the right to establish a standardized reporting format with which the Contractor must comply. Reports may be requested in hard copy as well as on flash drive or by computer transfer in a format compatible with Regional Transit Authority computer hardware and software.

(b) Specific Reporting Requirements and Records. -- The Contractor shall prepare and maintain the following records and documents, and shall submit the following reports to the Regional Transit Authority:

(1) Service Reports. -- The Contractor shall submit to the Regional Transit Authority, by not later than 1:00 P.M. on each Wednesday during the Contract Term, a report indicating the actual number of total hours, Vehicle Hours, Revenue Service Hours, total miles, Revenue Service Miles, and peak Revenue Vehicles operated during the previous Sunday through Saturday period. The report shall also include any missed miles and hours and subtracted from the total. Such information shall be for each route and shall be made in a format approved by the Regional Transit Authority.

(2) Daily Reports. -- The Contractor shall submit to the Regional Transit Authority not later than 1:00 p.m. on each Day during the Contract Term, in a format approved by the Regional Transit Authority, the following reports:

(A) A report of the previous day's Incomplete Scheduled Trips, early trips, and trips delayed more than 15 minutes.

(B) A copy of the Maintenance Department down Vehicles list that includes Vehicle number, the date the Vehicle was downed, the reason the Vehicle was downed, the date the Vehicle is expected to be returned to service, and (if applicable) the reason for the delay in returning to service (e.g., parts on order). In addition, this list shall identify any Vehicles that are off-property for repair, their location, and the expected date of return.

(3) Weekly Summaries. -- The Contractor shall prepare weekly summary reports that include:

(A) The previous week's warranty recovery submittals to vendors for Vehicles under warranty.

(B) Weekly on-time performance for the previous four weeks.

(C) Weekly Preventable Accidents per 100,000 Miles statistics for the previous four weeks.

(D) Weekly Mechanical Service Interruptions per 100,000 Miles for the previous four weeks.

(E) The number of active coach operators and maintenance technicians employed in the provision of services under this Agreement during the previous week.

(4) Monthly Summaries. -- The Contractor shall prepare monthly summaries of the various required reports in accordance with established reporting schedules. These summaries shall include but are not limited to: route-by-route operating data, accident report, roadcall report, wheelchair use report, bicycle rack use report, FTE Payroll report, and other requested reports. The Contractor shall submit monthly summary reports to the Regional Transit Authority no later than 5 Days after the end of each month.

(5) Monthly Performance Reporting. -- The Contractor shall provide the Regional Transit Authority with a Monthly Performance Report that includes all the information and data necessary to verify the invoice amount for each Contract Month pursuant to Section 8 of this Agreement. No later than ten (10) calendar days after the end of a Contract Month, the

Contract shall submit a Monthly Performance Report that includes no less than the following for each mode of transportation services (if applicable):

- (i) Actual arrival and departure times for all scheduled stops along a route, for all routes along with information on any and all missed stops.
- (ii) Actual Revenue Service Miles on all Trips, for all routes along with information on missed Revenue Service Miles.
- (iii) Actual number of Service Interruptions.
- (iv) Actual number of Preventable Accidents.
- (v) Actual time to answer each call received on the ADA Paratransit Reservation Line.
- (vi) Actual number of calls dropped on the ADA Paratransit Reservation Line.
- (vii) Detailed outcome of any Vehicle inspections undertaken by entities other than the Regional Transit Authority and specify whether the inspections resulted in a non-compliance infraction and/or an in-service Vehicle being removed from service.
- (viii) Actual fare revenue collected.
- (ix) Actual ridership volume data.
- (x) Detailed outcome of any traffic or parking violations, including the amount of the resulting fine.
- (xi) Actual Revenue Service Hours on all Trips for all routes.
- (xii) Details on any in-service Vehicle deemed not Fit-for-Use including the date in which the Vehicle was taken out of service.
- (xiii) Actual Utility consumption amounts, for diesel fuel, gasoline and traction power, respectively in the form of the Monthly Utility Consumption Report in accordance with Attachment F-2.

(6) Annual Performance Reporting. -- Within 40 calendar days after the end of a Contract Year, the Contractor shall provide, at a minimum, an amalgamation of the Monthly Performance Reports provided within the last Contract Year in the form of an Annual Performance Report. The Contractor shall provide a draft Annual Utility Consumption Adjustment Report, which contains all information necessary to support the calculation of the Annual Utilities Consumption Adjustment for the relevant Contract Year.

(7) Passenger Complaint Reports. -- The Contractor shall document operational problems and passenger complaints (whether received directly or through the Regional Transit Authority) and describe any action taken regarding these problems or

complaints. Copies of such documentation shall be input into the Customer Comment Tracking System on the day following identification of the operational problem or receipt of such passenger complaint. The Contractor shall address all passenger complaints in accordance with the complaint categories and procedures set forth in Section 26.

(8) Incident and Accident Reports. -- The Contractor shall, in accordance with the policy and process established by the Regional Transit Authority, immediately notify the Executive Director (or other appropriate Regional Transit Authority management staff if the Executive Director cannot be contacted) in the event of any traffic accident involving personal injury or substantial property damage or any other significant non-routine incident or event occurring in the operation of services.

(9) National Transit Database.

(A) In order to assure compliance with the annual National Transit Database (NTD) reporting requirements, the Contractor shall conduct on-board data sampling to statistically compute valid passenger mile data for all fixed route, paratransit, and special services it provides. The Contractor shall use additional on-board data collection personnel (who shall be a third party, and not the bus operator) to conduct sampling on the Revenue Vehicles, and shall otherwise conduct its sampling in a manner that will assure maximum accuracy in reporting and that is consistent with the techniques described in FTA Circular 2710.1A (dated July 18, 1988). The Regional Transit Authority will provide to the Contractor a list of all Trips to be sampled at a minimum of 2 (two) weeks prior to the sample date.

(B) The Contractor shall submit the daily random sample Trip sheets, in the form provided by the Regional Transit Authority via MS Excel worksheets for each route/direction, no later than 1:00 P.M. on Wednesday for the previous Sunday through Saturday sampled Trips. The weekly NTD data shall be compiled into a weekly report/form furnished by the Regional Transit Authority via a MS Excel worksheet. The Contractor shall prepare a quarterly report of the random Trips to be submitted no later than 30 Days after the end of each quarter and also prepare an annual summary to be submitted no later than 30 Days after the end of the fiscal year.

(C) The Contractor shall be responsible for ensuring that all reported NTD data meets FTA requirements and definitions, and for maintaining the most

recent NTD data collection procedures. The Contractor shall reimburse the Regional Transit Authority for the cost of the audit that contains the NTD report.

(D) As part of the NTD reports, the Contractor shall also provide to the Regional Transit Authority's designee or submit directly into the NTD reporting module, by the 15<sup>th</sup> day of each month for the preceding month, the monthly ridership activities and the safety and security reports required by FTA (as more specifically described in paragraph (16) hereof).

(10) Financial Records. -- The Contractor shall establish and maintain separate accounts of all project expenditures and any other relevant financial records or documents, and shall maintain bank records reflecting all farebox receipts. The project expenditures will include, but not limited to, the actual costs to maintain Revenue Vehicles. The Contractor's financial records shall be kept on a strict accrual basis with an annual financial and data collection audit performed by an accounting firm contracted by the Regional Transit Authority. All source documents shall be maintained for three (3) fiscal years following final payment (or the completion of any litigation arising from services provided under this Agreement, whichever time period is later in time) and may be audited by the Regional Transit Authority, the FTA, or other authority at any time within this period.

(11) Disadvantaged Business Enterprise (DBE) Report. -- The Contractor shall prepare a quarterly DBE report to be submitted no later than thirty (30) Days after the end of each quarter and an annual DBE report to be submitted no later than thirty (30) Days after the end of the fiscal year. The report shall include (A) a listing of all DBE firms used; (B) the type of procurement in which DBEs were involved; and (C) a percent (by dollar amount) of purchases from DBE firms, as measured against all other purchases.

(12) Equal Employment Opportunity (EEO) Affirmative Action Report. -- The Contractor shall maintain and implement an Equal Employment Opportunity/Affirmative Action Program and policy in accordance with FTA guidelines. The Contractor shall, not later than 30 Days after the end of each fiscal year, prepare an EEO report which consists of the following:

- (A) Workforce Analysis for each job category;
- (B) Job Group Analysis for each job category;
- (C) Hiring Analysis for each job category;
- (D) Promotional Analysis for each job category;
- (E) Termination Analysis for each job category;



(F) Utilization Analysis that shows the ethnic and gender breakdown for each job category as well as indicates the short term and long term goals for achieving under-utilized minority groups; and

(G) Availability Analysis that compares the current workforce against the available workforce.

(13) Clever Device System Failure Report -- The Contractor shall provide a weekly failure report for Clever Device System Equipment to the Regional Transit Authority by Thursday of the following week.

(14) Surveys. – The Regional Transit Authority may, in its discretion, obtain additional documentation of service through the use of passenger surveys. These surveys may be administered by authorized representatives of the Regional Transit Authority or its designee. The Contractor shall ensure the cooperation of all personnel with any operational procedures relating to such surveys, including the distribution of survey questionnaires or other actions necessary to obtain service related information.

(15) NTD Safety and Security Reporting. -- The Contractor shall submit NTD Safety and Security reports regarding accidents and incidents in accordance with the following provisions of this paragraph:

(A) The Contractor shall enter all accidents/incidents into TransTrack as soon as possible, but no later than the fifteenth (15<sup>th</sup>) day of each month for the preceding month.

(B) The Contractor shall scan all documents relevant to accidents/incidents into TransTrack (i.e., accident/incident reports, police reports, dispatcher notes/comments) as soon as possible, no later than the 15<sup>th</sup> day of each month for the preceding month.

(C) The Contractor shall enter all Safety & Security 50 (S&S 50) Minor Incidents meeting NTD thresholds into the NTD Internet Reporting System on a monthly basis.

(16) The Regional Transit Authority NTD Safety and Security Responsibility. -- Regional Transit Authority shall be responsible for (A) entry of all Safety & Security 40 (S&S 40) Major Incidents meeting NTD thresholds into the NTD Internet Reporting System on a monthly basis; (B) review and verification of the accuracy of all Safety and Security Reports, both S&S 40 Major and S&S 50 Minor; and (C) all NTD Safety and Security Monthly final submissions.

(c) Meetings. – The Regional Transit Authority's Executive Director, or his or her designee, and appropriate Regional Transit Authority management staff and the Contractor's

General Manager and appropriate Key Personnel shall meet (1) at least once each month to review the overall performance of the Contractor and the administration of this Agreement; (2) at least quarterly to review Americans with Disability Act issues and related matters; and (3) at least quarterly to review NTD reportable Safety and Security incidents and related matters.

## **SEC. 24 PASSENGER COMPLAINTS**

The Contractor shall address all passenger complaints regarding operational or service deficiencies through the use of Regional Transit Authority designated software as follows:

(1) If the complaint relates to safety or serious operational deficiencies, the Contractor shall (A) contact the person filing the complaint within twenty-four (24) hours after it is filed; and (B) investigate the complaint and file a report with the Regional Transit Authority explaining the results of the investigation within three (3) calendar days after the complaint is filed.

(2) If the complaint is of a less serious nature (not covered by paragraph (1)) the Contractor shall contact the person filing the complaint, investigate the complaint, and file a report with the Regional Transit Authority within five (5) calendar days after the complaint is filed. In all cases, the Contractor shall make (and document) at least three (3) attempts to contact the person filing the complaint unless the customer has indicated, through the comment intake process, that they do not want to be contacted regarding the resolution of the investigation.

## **SEC. 25 INSPECTION OF WORK**

(a) General. -- All Work (which term in this Section includes service performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and testing by the Regional Transit Authority at all times and places during the Contract Term. All inspections by the Regional Transit Authority shall be made in such manner as to not unduly delay the Work. The Regional Transit Authority shall have the right to enter the premises used by the Contractor for the purpose of inspecting and auditing all data and records which pertain to the Contractor's performance under this Agreement.

(b) Re-performance. -- If any Work performed is not in conformity with the requirements of this Agreement, the Executive Director shall have the right to require the Contractor to perform the Work again in conformity with such requirements at the Contractor's

sole expense and with no increase in the amount of compensation hereunder. In the event the Contractor fails promptly to perform the Work again, the Regional Transit Authority shall have the right, either by contract or otherwise, to have the Work performed in conformity with such requirements and charge to the Contractor any costs to the Regional Transit Authority that are directly related to the performance of such Work, or to terminate this Agreement for default as provided in Section 41. When the work to be performed is of such a nature that the defect cannot be corrected by re-performing the work, the Regional Transit Authority shall have the right to: (1) require the Contractor to immediately take all necessary steps to ensure future performance of the Work in conformity with the requirements of this Agreement; and (2) reduce the amount paid to the Contractor under this Agreement to reflect the reduced value of the work performed.

#### **SEC. 26 OPERATION DURING A DECLARED EMERGENCY**

In the event of a declared emergency by the Executive Director, the Contractor shall deploy Vehicles in a manner described by the Executive Director. During a declared emergency, the Contractor shall comply with the City Assisted Evacuation Plan when activated. The Regional Transit Authority shall be obligated to compensate the Contractor, during such period of declared emergency, for services which significantly exceed the normal expense of operating services under this Agreement, as documented by the Contractor and agreed upon by the Parties.

#### **SEC. 27 INSURANCE**

(a) Required Program of Insurance. -- Without limiting Contractor's indemnification of Regional Transit Authority under Section 29, the Contractor shall be required to provide, and to maintain at all times during the Contract Term, at its sole expense, a program of insurance that includes each of the following:

(1) General Liability. -- The Contractor shall obtain, and maintain in full force and effect, comprehensive general liability insurance in the amount of \$10,000,000 total, with primary coverage of at least \$2,000,000 combined single limit bodily injury and property damage liability. A separate umbrella liability insurance policy may be used to provide general liability coverage of the additional \$8,000,000.

(2) Auto Liability. -- The Contractor shall provide the Regional Transit Authority with Vehicle liability insurance in the amount of \$10,000,000 total, with primary coverage of at least \$2,000,000 combined single limit bodily injury and property damage, covering all Vehicles used in carrying out this Agreement. Coverage shall also include collision and comprehensive coverage. Coverage of Revenue Vehicles shall commence on the date of

acceptance of those Vehicles by the Regional Transit Authority. Any deductible expenses shall be paid by the Contractor. A separate umbrella liability insurance policy may be used to provide Vehicle liability coverage of the additional \$8,000,000.

(3) Workers' Compensation. -- The Contractor shall obtain and maintain worker's compensation and employer's liability insurance as required by the laws of the State of Louisiana .

(4) Errors and Omissions/Professional Liability. -- The Contractor shall obtain and maintain errors and omission/professional liability insurance in the amount of \$10,000,000.

(b) Evidence of Insurance. -- The Contractor shall, within five (5) Days after the Request following Award under Section (3) of this Agreement, provide the Regional Transit Authority with certificates of insurance from its carrier(s) showing proof of all coverages required under subsection (a). The Contractor shall update its insurance information, including proof of coverages, annually or when changes occur to the coverages or insurance policies during the Contract Term.

(c) Required Conditions. -- The Contractor also agrees to the following conditions relating to insurance:

(1) The Regional Transit Authority, its officers, agents, and employees, and members of the Regional Transit Authority Board of Commissioners shall be included as additional insureds on all liability insurance policies except worker's compensation and legal liability coverage (i.e., fire); provided that no such person included as an additional insured shall have any liability for the payment of premiums or assessments under the policies. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.

(2) The Regional Transit Authority shall be named as loss payee as its interest may appear on all insurance covering the Regional Transit Authority-provided Revenue Vehicles and Non-Revenue Vehicles and on the Facilities and Equipment and materials therein.

(3) The Contractor's insurance required herein is primary and no insurance held or owned by the Regional Transit Authority shall be called upon to contribute to the loss.

(4) The Contractor's insurance shall be obtained from carriers with an A.M. Best rating of "A" or better, and authorized and licensed to transact insurance business in the State of Louisiana .

(5) The insurance shall not be canceled, materially reduced in coverage or limits, or non-renewed in the case of a continuous policy, except after thirty (30) calendar days'

written notice, or ten (10) calendar days' notice in the event of cancellation due to non-payment of premium, by registered or certified mail has been given to the Regional Transit Authority at its office at the address set forth in Section 49 hereof. In the event of any such cancellation, reduction in coverage, or non-renewal, the Contractor shall obtain and have in place, prior to the effective date of any such change, replacement insurance that complies with all coverage requirements and other conditions set forth in this Section. Any failure to provide such insurance on a timely basis shall be a material breach of this Agreement.

(6) The insurance afforded by the policy for contractual liability insurance (subject to the terms, conditions and exclusions applicable to such insurance) shall include liability assumed by the Contractor under the indemnification and/or hold harmless provisions of this Agreement.

(d) Aggregate Limits/Blanket Coverage. -- If any of the required insurance coverage contains aggregate limits, or applies to other operations or tenancy of the Contractor outside this Agreement, the Contractor shall give the Regional Transit Authority prompt written notice of any incident, occurrence, claims settlement, or judgment against such insurance which may diminish the protection such insurance affords the Regional Transit Authority. The Contractor shall further take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

(e) Self-Insurance and Self-Insured Retention. -- Self-insurance programs and self-insured retention in insurance policies are subject to separate approval by the Regional Transit Authority upon review of evidence of the Contractor's financial capacity to respond and to provide the required protection for Regional Transit Authority property, Facilities, Vehicles, and Equipment. In addition, such programs or retention must provide the Regional Transit Authority with at least the same protection from liability and defense of claims and suits as would be afforded by first-dollar insurance.

(f) Modification of Coverage. -- The Regional Transit Authority reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the Contractor sixty (60) calendar days advance written notice. In that event, the Parties will negotiate any appropriate adjustments to the Annual Service Payment or Revenue Service Hour Rates, based on documentation from the Contractor as to any actual increased cost of insurance.

(g) Subrogation. -- The insurance providers shall waive all rights of subrogation and contribution against the additional insureds, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to the perils insured against in relation to

those activities described generally above with regard to operations performed by or on behalf of the Contractor regardless of any prior, concurrent, or subsequent active or passive negligence by the additional insureds.

(h) Failure to Procure Insurance. -- The Contractor's failure to procure or maintain required insurance or self-insurance program shall constitute a default and material breach of contract under which the Regional Transit Authority may, after a 24-hour opportunity to cure, immediately either terminate this Agreement, or at its discretion, purchase the insurance and charge the cost to the Contractor or deduct such cost from payments due to the Contractor hereunder.

(i) Underlying Insurance. -- The Contractor shall be responsible for requiring indemnification and insurance, of such types and with such limits of liability, as the Contractor deems appropriate from its subcontractors, employees receiving mileage allowance, consultants, and agents, if any, to protect the interests of the Contractor and the Regional Transit Authority, and to ensure that such persons comply with any applicable insurance statutes.

## **SEC. 28 BONDING REQUIREMENTS**

(a) Performance Bond. -- The Contractor shall procure, at its sole expense, and keep in effect at all times during the Contract Term, a performance bond equivalent to twenty-five (25) percent of the cost of service for the then current Contract year, excluding capital costs, in favor of the Regional Transit Authority and executed by a corporate surety with an A.M Best rating of "A" or better and authorized to conduct business as a surety in the State of Louisiana. The Contractor shall provide a fully notarized performance bond to the Regional Transit Authority within five (5) Days after the Request following Award issued by the Regional Transit Authority pursuant to Section 3 of this Agreement. The Contractor shall provide any necessary updates, renewals, or modifications to the performance bond on an annual basis thereafter or before each anniversary date of Contract Award.

(b) Performance Bond Renewal. -- The performance bond must be kept in full force and effect at all times during the Contract Term. The bond shall be conditioned upon faithful performance by Contractor of the terms and conditions of this Agreement and shall be renewed to provide for continuing liability in the amount set forth in subsection (a) notwithstanding any payment or recovery thereon. Such bond shall not be subject to cancellation except after notice to the Executive Director by registered mail at least forty-five (45) Days prior to the date of cancellation. Failure to maintain such surety bond shall be a default of this Agreement and

may, at the Regional Transit Authority's discretion, result in cancellation or termination of this Agreement.

(c) Enforcement of Performance Bond. -- If the Regional Transit Authority determines that the Contractor has substantially failed to keep and perform the covenants, conditions, and obligations under in this Agreement and the RFP, then the Regional Transit Authority may require the Surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, the Executive Director shall notify the Surety and give the Surety an opportunity to perform within a reasonable time certain. If the Surety fails to perform, the Executive Director shall perform and assess the Surety on its bond for the cost of such performance. The cost of such performance includes the costs of all labor and Equipment reasonably necessary to perform the work in the Contractor's absence.

## **SEC. 29      INDEMNIFICATION AND HOLD HARMLESS**

(a) Contractor's Indemnification. -- The Contractor shall protect, defend, indemnify and hold the Regional Transit Authority, its officers, agents, and employees and the members of the Regional Transit Authority Board of Commissioners, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of, or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character (hereinafter collectively "claims") in connection with or arising directly or indirectly out of this Agreement or the performance thereof by the Contractor or any subcontractor. Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor shall investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense, and shall bear all other costs and expenses related thereto, whether or not it is alleged or determined that the Contractor was negligent, and without regard to whether such claim is groundless, false, or fraudulent.

(b) Disclaimer of Liability. -- Regional Transit Authority will not hold harmless or indemnify the Contractor for any liability whatsoever.

## **SEC. 30      DISPUTES**

(a) General. -- Any dispute between the Contractor and the Regional Transit Authority relating to the implementation or administration of this Agreement will be resolved in accordance with this Section.

(b) Resolution. -- The Parties shall first attempt to resolve the dispute informally in discussions between Regional Transit Authority's Chief Operating Officer and the appropriate Contractor Key Personnel. If these individuals are unable to resolve the dispute within fifteen (15) Days after it arises, the matter in dispute will be submitted to the Contractor's General Manager and the Regional Transit Authority's Executive Director for resolution. If the dispute remains unresolved fifteen (15) Days after that submittal, the Contractor may request that the Executive Director issue a recommended decision on the matter in dispute. The Executive Director shall issue the recommended decision in writing and provide a copy to the Contractor.

(c) Board Review. -- The recommended decision of the Executive Director shall become final unless, within fifteen (15) Days of receipt of such recommended decision, the Contractor submits a written request for review to the Regional Transit Authority Governing Body. In connection with any such review, the Contractor's representative and the Executive Director shall be afforded an opportunity to be heard and to offer evidence on the issues presented.

(d) Further Review/Resolution -- If a dispute remains unresolved after review by the Regional Transit Authority's Board under subsection (c), the Parties agree that prior to initiating any litigation they will make a good faith effort to utilize mediation, arbitration, or other alternative dispute resolution procedures to resolve the dispute. If the dispute still remains unresolved, either party may seek judicial review and resolution in an appropriate court of the State of Louisiana .

(e) Obligation to Proceed. -- Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with this Agreement and the direction or recommended decision of the Executive Director.

## **SEC. 31      ASSIGNMENT**

This Agreement or any portion hereof shall not be assigned, nor shall the interests, rights, duties or responsibilities of the Contractor be transferred, unless the Regional Transit Authority in its sole discretion grants prior written Approval thereto. This requirement applies to any merger or consolidation involving the Contractor which would cause its responsibilities under this Agreement to be transferred to or assumed by a new, different, or restructured entity, or would result in a reduction or other adverse change in its financial capacity and/or liquidity. This



provision is separate and apart from the provisions concerning subcontracting set forth in Section 32 hereof.

## **SEC. 32 SUBCONTRACTING**

(a) Effect of Subcontracting. -- The Contractor shall be fully responsible for all work performed by any subcontractor. The Contractor may not, by subcontract, modify its obligation to perform in full accordance with its Proposal and its BAFO, change its Key Personnel, alter any of its plans, programs, or policies listed in Section 3(c), as Approved by the Regional Transit Authority, or otherwise modify the basis upon which the Contractor was selected and Contract award made. Any action of the Contractor in violation of the preceding sentence shall constitute a breach of this Agreement and an Event of Default. Further, the entering into of a subcontract shall not, under any circumstances, relieve the Contractor of its liability and obligations under this Agreement, and all transactions with the Regional Transit Authority must be through the Contractor.

(b) Approval by the Regional Transit Authority. -- The Contractor may not subcontract more than five (5) percent of the annual contract amount without the prior written Approval of the Regional Transit Authority. Any Approval of a subcontract shall not be construed as making the Regional Transit Authority a party to such subcontract, giving the subcontractor privity of contract with the Regional Transit Authority, or subjecting the Regional Transit Authority to liability of any kind to any subcontractor.

(c) Full and Open Competition for Subcontracts. -- The Contractor shall assure a full and open competitive process in the selection of subcontractors, which shall utilize one of the following procurement procedures, subject to applicable law: (1) work to be subcontracted through low-bid, with the bids publicly solicited and a fixed price contract awarded to the responsive and responsible bidder whose bid, conforming to the material terms and conditions of the invitation for bids, is lowest in price; (2) work to be subcontracted through best value based selection, with the request for proposals publicized, evaluation factors identified in the solicitation document and used to review proposals, and award made to the firm whose proposal is most advantageous or offers the best value to the Project, with price and other identified factors considered; and (3) work to be subcontracted under a sole source award where justified in accordance with applicable law and regulations.

(d) Federal Requirements. -- The Contractor shall include the applicable Federal requirements in Attachment G in all of its subcontracts.

## **SEC. 33 INDEPENDENT CONTRACTOR**

Under the terms of this Agreement, the Contractor is an independent contractor and shall have and retain full control and supervision over the services it performs, and also has full control over the employment and direct compensation and discharge of all persons, other than Regional Transit Authority employees and agents, assisting in the performance of its services. The Contractor shall be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors during the Contract Term. The Contractor shall be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees (including the negotiation of labor agreements if applicable and compliance with any prevailing wage rates), and for compliance with social security, payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor shall be required to comply fully with the worker's compensation laws and prevailing wage laws of the State of Louisiana regarding the Contractor and its employees, and to indemnify and hold harmless the Regional Transit Authority from any failure to comply with such laws.

#### **SEC. 34      LICENSES, PERMITS, AND TAXES**

The Contractor shall be appropriately licensed for the services to be performed under this Agreement. The cost for any required licenses or permits (fees for the Revenue Vehicles and Regional Transit Authority-supplied Non-Revenue Vehicles) shall be the responsibility of the Regional Transit Authority. The Contractor shall be responsible for the cost of replacement license plates that are required to be replaced prematurely due to reasons other than normal wear and tear. The Contractor shall also be liable for any and all taxes due as a result of performance of services under this Agreement.

#### **SEC. 35      CONFLICT OF INTEREST**

(a)      General.

(1)      No Commissioner of the Regional Transit Authority, officer, or employee shall participate in the selection, or in the award or administration, of this Agreement if a conflict of interest, real or apparent, would be involved. Such a conflict is determined in accordance with the Conflict of Interest Code adopted by the Regional Transit Authority Board of Commissioners and applicable Federal and State laws and regulations, including the Louisiana Code of Governmental Ethics.

(2)      Regional Transit Authority's Board of Commissioners, officers, and employees shall neither solicit, demand, nor accept from any person anything of a pecuniary value for or because of any action taken or to be taken, in the performance of their duties.

(b) Organizational Conflict of Interest. -- Prior to entering into this Agreement, the Contractor has informed the Regional Transit Authority of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, result in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the Work. During the Contract Term, the Contractor shall be responsible for informing the Regional Transit Authority of any such organizational conflict that arises. In the event of any such post-award organizational conflict, Foothill may take appropriate action, including terminating the Agreement or establishing procedures or requirements to avoid or mitigate the conflict.

#### **SEC. 36 COMPLIANCE WITH LAWS AND PERMITS**

The Contractor agrees to comply with all existing and future Federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Agreement, including, but not limited to, the Federal laws identified in Attachment G and any other laws or regulations referred to in this Agreement or the other Contract Documents. If the Contract Documents are at variance with any such law or regulations in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish to the Regional Transit Authority certificates of compliance with all such laws, orders, and regulations.

#### **SEC. 37 CANCELLATION OF CONTRACT**

In any of the following cases, the Regional Transit Authority shall have the right to cancel the Agreement immediately upon notice to the Contractor and without expense to the Regional Transit Authority: (1) the Contractor knowingly misrepresents any material fact in securing or performing this Agreement; (2) the Agreement is obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) the Agreement conflicts with any statutory or constitutional provision of the State of Louisiana or the United States. This Section shall not be construed to limit the Regional Transit Authority's right to terminate the Agreement for convenience or default, as provided in Sections 38 and 41, respectively.

#### **SEC. 38 TERMINATION FOR CONVENIENCE**

(a) General. -- The performance of Work under the Agreement may be terminated by the Regional Transit Authority in accordance with this Section in whole, or from time to time in part, whenever the Regional Transit Authority determines, upon recommendation of the Executive Director, that such termination is in the best interest of the Regional Transit Authority. Any such termination shall be effected by delivery to the Contractor of a notice of termination,

provided not less than forty-five (45) calendar days prior to the termination date, specifying the extent to which performance of Work under the Agreement is terminated and the date upon which such termination becomes effective.

(b) Notice of Termination; Required Actions. -- Upon receipt of a notice of termination, and except as otherwise directed by the Executive Director, the Contractor shall (1) stop Work under the Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination; (4) assign to the Regional Transit Authority in the manner, at the times, and to the extent directed by the Executive Director, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such terminated orders and subcontracts, with the approval or ratification of the Regional Transit Authority, to the extent the Executive Director may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to the Regional Transit Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Executive Director, supplies, Equipment, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated, and any information and other property which, if the Agreement had been completed, would have been required to be furnished to the Regional Transit Authority; (7) complete any such part of the Work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as the Executive Director may direct, for the protection and preservation of the property related to the Agreement which is in the possession of the Contractor and in which the Regional Transit Authority has or may acquire an interest. Payments by the Regional Transit Authority to the Contractor shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time.

### **SEC. 39      TERMINATION BY MUTUAL AGREEMENT**

The Agreement may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination for convenience or default provisions contained in Sections 38 and 41.

### **SEC. 40      REMEDIAL MEASURES**

(a) Available Rights and Remedies. -- Nothing in this Section shall be considered to limit the rights and remedies of the Regional Transit Authority in this Agreement, including to assess Deductions pursuant to Section 22, terminate for convenience pursuant to Section 38, and terminate for default pursuant to Section 41.

(b) Warning Notice. The Regional Transit Authority may give the Contractor written notice of unacceptable performance ("Warning Notice"). The Warning Notice shall specify the performance shortcomings giving rise to its issuance.

(c) Bases for Issuance. -- The Regional Transit Authority may issue a Warning Notice in the event any of the following occur:

- (1) Assessed Deductions exceed \$480,000 in a Contract Month;
- (2) Assessed Deductions exceed \$1,200,000 in aggregate over any three (3) consecutive Contract Months;
- (3) On-time Performance on any three (3) Bus routes is lower than 60% in a Contract Month in Contract Year 1, or lower than 65% on any three (3) Bus routes in a Contract Month after Contract Year 1;
- (4) On-time Performance on any Bus route in a Contract Month is lower than 50%;
- (5) On-time Performance on any Streetcar route is lower than 60% in a Contract Month in Contract Year 1, or lower than 65% on any Streetcar route after Contract Year 1;
- (6) On-time Performance for any Ferry route in a Contract Month is lower than 75%;
- (7) On-time Performance for Paratransit service in a Contract Month is lower than 80%;
- (8) Fewer than 90% of trips in a Contract Month are not Missed Trips for any Bus, Streetcar or Ferry route;
- (9) More than 30 Missed Trips occur for Paratransit service in a Contract Month;
- (10) More than 30 Missed Trips are last Trips of the day in a Contract Month;
- (11) More than 2 Service Interruptions occur for Ferry service in a Contract Month;
- (12) More than 1.5 Preventable Accidents per 100,000 Revenue Service Miles for Bus or ADA Paratransit service in a Contract Month;

(13) More than 5.0 Preventable Accidents per 100,000 Revenue Service Miles for Streetcar service in a Contract Month;

(14) More than 2.0 Preventable Accidents occur for Ferry service in a Contract Month;

(15) More than 10 traffic or parking violations are issued by authorities to the Contractor in a Contract Month;

(16) The proportion of (actual fare revenue collected / Ridership Revenue) is lower than 95% in a Contract Month;

(17) The volume of customer complaints increase more than 15% in a Contract Year from the previous Contract Year; or

(18) Any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by the Regional Transit Authority in respect of any Scheduled Report delivered by the Contractor to the Regional Transit Authority in accordance with this Agreement.

(d) Remedial Action Plan – Within five (5) Days of the issuance of the Warning Notice, the Contractor shall submit a report (“Remedial Action Plan”) which provides a rationale behind the occurrence of the relevant failure, defect or non-compliance; and provides detailed steps the Contractor will take to mitigate, rectify or protect against such circumstances. The Remedial Action Plan shall specify in reasonable detail the additional measures to be taken by the Contractor in response to the matters which led to the Warning Notice being sent. The Contractor shall bear its own costs and expenses and shall bear all reasonable costs, charges and expenses of the Regional Transit Authority properly incurred as a consequence of failures giving rise to the Warning Notice.

(e) Regional Transit Authority Review. -- The Remedial Action Plan shall be subject to the Regional Transit Authority’s review and Approval. The Regional Transit Authority may, upon review of the Remedial Action Plan, approve or provide revisions including additional and/or alternative necessary or expedient steps to mitigate against the relevant failure, defect or noncompliance.

(f) Failure to Submit. -- In the event the Contractor fails to submit the Remedial Action Plan within five (5) Days of the Regional Transit Authority’s issuance of the Warning Notice, the Regional Transit Authority may apply the Reporting Deduction pursuant to Section 22(b)(16). In addition, the Regional Transit Authority may pursue other remedies under the Agreement, including termination for default pursuant to Section 41 of this Agreement.

(g) Evidence of Default. – Without limiting the circumstances pursuant to which the Regional Transit Authority may initiate default proceedings under Section 41, the following failures of performance constitute prima facie evidence of default under Section 41 of this Agreement:

- (1) Deductions exceed \$720,000 in a Contract Month;
- (2) Deductions exceed \$1,800,000 in aggregate over any 3 consecutive Contract Months;
- (3) Contractor receives six (6) or more Warning Notices during a Contract Year;
- (4) On-time Performance on any three (3) Bus routes is lower than 45% in a Contract Month in Contract Year 1, or lower than 50% on any three (3) Bus routes in a Contract Month after Contract Year 1;
- (5) On-time Performance on any Bus route in a Contract Month is lower than 35%;
- (6) On-time Performance on any Streetcar route is lower than 45% in a Contract Month in Contract Year 1, or lower than 50% on any Streetcar route after Contract Year 1;
- (7) On-time Performance for any Ferry route in a Contract Month is lower than 60%;
- (8) On-time Performance for Paratransit service in a Contract Month is lower than 65%;
- (9) Fewer than 75% of trips are Missed Trips for any Bus, Streetcar or Ferry route in a Contract Month;
- (10) More than 45 Missed Trips occur for Paratransit service in a Contract Month;
- (11) More than 45 Missed Trips are last Trips of the day in a Contract Month;
- (12) More than 4 Service Interruptions occur for Ferry service in a Contract Month;
- (13) More than 2.5 Preventable Accidents per 100,000 Revenue Service Miles for Bus or Paratransit service in a Contract Month;
- (14) More than 8.0 Preventable Accidents per 100,000 Revenue Service Miles for Streetcar service in a Contract Month;
- (15) More than 4.0 Preventable Accidents occur for Ferry service in a Contract Month;

(16) More than 15 traffic or parking violations are issued by authorities to the Contractor in a Contract Month;

(17) The proportion of (actual fare revenue collected / Ridership Revenue) is lower than 90% in a Contract Month; or

(18) The volume of customer complaints increase more than 30% in a Contract Year from the previous Contract Year

#### **SEC. 41      TERMINATION FOR DEFAULT**

(a) Events of Default. -- Subject to the provisions of this Section, the Regional Transit Authority may terminate this Agreement in whole or in part in any one of the following circumstances:

(1) The Contractor fails to provide services in accordance with the requirements and standards set forth in this Agreement, including the Attachments hereto.

(2) The Contractor fails to perform any of the provisions of this Agreement in accordance with its terms.

(3) The Contractor fails to make progress in the prosecution of the Work under this Agreement so as to endanger such performance.

(4) The Contractor files for bankruptcy, becomes insolvent, or is unable or otherwise fails to pay or otherwise satisfy, in the ordinary course of business, its financial obligations to its suppliers, subcontractors, or employees.

(5) The Contractor assigns or transfers this Agreement or any right or interest herein, without prior written authorization by the Regional Transit Authority.

(6) The Contractor fails to maintain the insurance or bonds required under this Agreement or fails to provide the indemnification required hereunder.

(b) Cure Notice. -- If the Regional Transit Authority determines that an Event of Default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor within thirty (30) Days in which to cure such default. If the Contractor fails to cure such default or to commence a cure within such time frame, or within such reasonable additional period as the Regional Transit Authority may allow, the Regional Transit Authority may declare the Contractor to be in default and terminate the Agreement in whole or in part.

(c) Procurement of Replacement Services. -- In the event that the Regional Transit Authority terminates this Agreement in whole or in part under this Section, the Regional Transit



Authority may procure, upon such terms and in such manner as the Executive Director may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the Regional Transit Authority for the following: (1) the costs associated with the termination of the Agreement and the procurement of replacement services by the Regional Transit Authority; (2) any excess costs of such similar supplies or services; and (3) any increase in the total Agreement cost, from the date of termination to the expiration date of the original Agreement, as a result of the re-procurement of services. The Contractor shall continue the performance of the Agreement to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and the Regional Transit Authority are subject to resolution pursuant to Section 30.

(d) Settlement of Claims. -- Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance to the provisions set forth in 48 CFR Part 49, as amended from time to time.

#### **SEC. 42      FORCE MAJEURE**

The Contractor shall not be liable for any failure to perform if acceptable evidence has been submitted to the Regional Transit Authority that failure to perform the Agreement was due to causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to, acts of God, civil disturbances, fire, war, or floods, but do not include labor-related incidents, such as strikes or work stoppages.

#### **SEC. 43      DISRUPTIONS IN SERVICE**

(a) Disruption Events. -- If the Contractor is unable, due to a strike, work stoppage, or other event not caused by Regional Transit Authority and not covered by the force majeure exception in Section 42 (a Disruption Event), to provide services in full compliance with the requirements of the Agreement, the Contractor shall provide the Regional Transit Authority, within twenty-four (24) hours after such Disruption Event occurs, with a plan and specific timetable for restoring the services in compliance with this Agreement. In addition, if the Contractor has reason to believe that a Disruption Event is likely to occur, the Contractor shall immediately notify the Regional Transit Authority and provide a plan and timetable for addressing such Disruption Event.

(b) Use of Alternative Services. -- If the Contractor fails to submit a timely plan for restoring services after a Disruption Event as required under subsection (a), or fails to restore services to the Regional Transit Authority's satisfaction within ten (10) calendar days after such Disruption Event, the Regional Transit Authority may, in lieu of finding the Contractor in default, obtain the services of an alternative operator or provide the services with its own resources

(collectively referred to as “alternative services”). The Regional Transit Authority may utilize such alternative services as a substitute for all or any part of the Contractor’s services, and may maintain such alternative services in effect until the Contractor is able to resume performance in full compliance with the Agreement.

(c) Contractor’s Duty to Reimburse. -- If The Regional Transit Authority utilizes alternative services under this Section, the Contractor shall be liable to the Regional Transit Authority for (1) the actual amount by which the cost of such alternative services exceeds the amount that would have been payable under this Agreement for comparable services by the Contractor; and (2) all costs (including staff and administrative costs) incurred by the Regional Transit Authority in soliciting and obtaining the alternative services.

(d) Limitation on Contractor’s Compensation. -- The only compensation due and payable to the Contractor by the Regional Transit Authority during any period in which alternative services are being provided shall be for any Revenue Service Hours actually provided by the Contractor, plus the a pro rata share (based on the amount of time the Contractor provides services) of the then-applicable Annual Service Payment calculated in accordance with Attachment F-2.

(e) Savings Clause. -- Any actions taken by the Regional Transit Authority pursuant to this Section by reason of the Contractor’s failure to perform shall not preclude Regional Transit Authority from subsequently finding the Contractor in default for the same of any related failure to perform.

#### **SEC. 44      AUDIT AND INSPECTION OF RECORDS**

The Contractor agrees that the Regional Transit Authority, the Comptroller General of the United States, and the Secretary of Transportation, or any of their duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all Work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of Work under this Agreement. The Regional Transit Authority may also authorize representatives of other project funding partners to inspect and audit the records of the Contractor relating to the performance of Work under this Agreement. Further, the Contractor agrees to maintain all required records for at least three (3) years after the later of: (1) final payment to the Contractor under this Agreement; or (2) the resolution of any litigation, disputes, or related actions arising under this Agreement.

#### **SEC. 45      LACK OF FUNDS**

The entering into the Agreement by the Regional Transit Authority is subject to its receipt of funds adequate to carry out the provisions of the Agreement in full.

**SEC. 46 NO FEDERAL GOVERNMENT OBLIGATIONS**

The Federal Government shall not be subject to any obligations or liabilities to the Contractor, or any other person other than the Regional Transit Authority in connection with the performance of this Agreement. Notwithstanding any concurrence that may be provided by the Federal Government in or approval of any solicitation or contract, the Federal Government has no obligations or liabilities to any party, including the Contractor.

**SEC. 47 WAIVER OF TERMS AND CONDITIONS**

The failure of the Regional Transit Authority or the Contractor to enforce one or more of the terms or conditions of the Agreement or to execute any of its rights and privileges, or the waiver by the Regional Transit Authority of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

**SEC. 48 INTERPRETATION, JURISDICTION, AND VENUE**

This Agreement shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of Louisiana . The Contractor hereby consents and submits to the jurisdiction of the appropriate courts of Louisiana or of the United States having jurisdiction in Louisiana for adjudication of any suit or cause of action arising under or in connection with this Agreement, or the performance of services hereunder, and further agrees that any such suit or cause of action may be brought in any such court.

**SEC. 49 OFFICIAL RECEIPT DURING CONTRACT PERFORMANCE**

Communications in connection with the performance of services under this Agreement shall considered received at the time actually received by the addressee or designated agent.

Communications should be addressed as follows:

To the Regional Transit Authority:

To Contractor:

[TO BE SUPPLIED]

**SEC. 50 SEVERABILITY**

In the event any provision of this Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining

provisions of the Agreement and each provision of the Agreement will be and is deemed to be separate and severable from each other provision.

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on June \_\_, 2019, with all the formalities required by law.

REGIONAL TRANSIT AUTHORITY

By: \_\_\_\_\_  
Flozell Daniels, Jr.  
Chairman, Regional Transit Authority

[CONTRACTOR]

By: \_\_\_\_\_  
[NAME AND TITLE]

APPROVED AS TO FORM

By: \_\_\_\_\_